



Regular Session

RS

Milwaukie City Council



**MILWAUKIE CITY COUNCIL
REGULAR SESSION**

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

**AGENDA
JULY 19, 2016**

2,226th Meeting

- 1. CALL TO ORDER** **Page
#**

Pledge of Allegiance
- 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. None Scheduled.**
- 3. CONSENT AGENDA**

These items are considered routine, and therefore, will not be allotted discussion time on the agenda; these items may be passed by the Council in one blanket motion; any Councilor may remove an item from the "Consent" agenda for discussion by requesting such action prior to consideration of that part of the agenda.

 - A. Authorize Agreements with Public, Educational and Government (PEG) Access Centers – Resolution** **2**
 - B. Visioning Advisory Committee (VAC) Appointments – Resolution** **20**
 - C. Creation of Library Construction Task Force (LCTF) – Resolution** **23**
- 4. AUDIENCE PARTICIPATION**

The presiding officer will call for citizen statements regarding City business. Pursuant to Milwaukie Municipal Code (MMC) Section 2.04.140, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and submit it to the City Recorder. Pursuant to MMC Section 2.04.360, "all remarks shall be directed to the whole Council, and the presiding officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The presiding officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.
- 5. PUBLIC HEARING**

Public Comment will be allowed on items under this part of the agenda following a brief staff report presenting the item and action requested. The presiding officer may limit testimony.

 - A. Adopt Criteria for Selection of City Manager – Resolution** **27**

Staff: Gary Rebello, Human Resources Director
 - B. Code Amendments to Regulate Marijuana Businesses (File #ZA-2016-001) – Ordinance** **37**

Staff: Denny Egner, Planning Director
- 6. OTHER BUSINESS**

These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.

 - A. C800 Radio Group Intergovernmental Agreement (IGA) – Ordinance** **75**

Staff: Mark Dye, Police Captain

B. Bike / Pedestrian Accessibility with Budget Committee	92
Staff: Charles Eaton, Engineering Director	
C. Riverfront Park Beach Repair – Resolution	129
Staff: Charles Eaton, Engineering Director	
D. Adopt Art in Public Places Ordinance – Ordinance, 2nd Reading	132
Staff: Mitch Nieman, Assistant to the City Manager	
E. Milwaukie Museum Lease	138
Staff: Mitch Nieman, Assistant to the City Manager	
F. Recreational Marijuana Tax – Ordinance and Resolution	144
Staff: Casey Camors, Finance Director	
G. Council Reports	

7. INFORMATION

8. ADJOURNMENT

Public Notice

Executive Sessions: The Milwaukie City Council may meet in Executive Session immediately following adjournment pursuant to ORS 192.660(2). All Executive Session discussions are confidential and those present may disclose nothing; representatives of the news media may attend as provided by ORS 192.660(3) but must not disclose any information discussed. Executive Sessions may not be held for the purpose of taking final actions or making final decisions and they are closed to the public.

The Council requests that mobile devices be set on silent or turned off during the meeting.

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**Regular Session
Agenda Item No.**

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Consent Agenda



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 3. A.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Agreements with Public, Educational and Governmental (PEG) access centers.**

From: Reba Crocker, Right of Way & Contract Coordinator

Date: July 19, 2016

ACTION REQUESTED

Approve Resolution authorizing the Mayor to sign agreements with PEG access centers.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

1983 - Ordinance 1543 established the Cable Communications Commission to oversee a PEG Grant program. Members were appointment by the City Council.

1987 - Ordinance 1618 repealed ordinance 1543 disbanded the Commission and directed staff to assume the duties of the commission.

BACKGROUND

PEG funds are collected by the City from cable companies as a pass-through fee. The funds collected are restricted by federal law and can only be used for capital facilities and equipment of PEG access centers.

Under the prior system, IGAs were created yearly after the Commission reviewed, approved and funded yearly requests. As of 1983, the City utilized a grant system where staff would collect and review applications prepared by PEG Access Centers (such as Clackamas Community College, Sabin Schellenberg, and Willamette Falls Media Center), prioritize the applications, and grant funding for capital facilities and equipment for the applicable organizations. In 2013, the City's program was put on hiatus due to staffing changes. Additionally, the old granting system was inefficient and required significant staffing time to perform.

Staff is recommending changing the system to a contractual one. If the agreements are implemented, the City would be able to allocate the funding according to the highest use without doing new agreements each year, thus saving the City and the PEG Access Centers staff time. In addition, the City will be better able to track all PEG expenses ensuring that all federal, state and local laws are followed. Under the proposed system, the City will be able to quickly comply with its responsibilities under the Cable franchises, if requested.

Specific amounts are not listed the agreements due fluctuations in the PEG funds received. Each year staff will determine, based on the amount of funds received, how much funding is available for use. Staff will weigh funding requests with the need for, age of current equipment and facilities to determine where the funds would be of highest use and benefit to Milwaukie

residents. In addition, if an access center doesn't use or need all allocated funding for the year, the City will have the flexibility to move funding to another access center with minimal staff time.

CONCURRENCE

Finance Director supports the approval of IGAs/MOU with PEG access centers.

FISCAL IMPACTS

There is no fiscal impact to the City. The funds are restricted and can only be used to support these PEG access centers and City PEG equipment.

WORK LOAD IMPACTS

Executing the agreements will reduce work load to City staff and add formal documentation procedures to the program.

ALTERNATIVES

Revitalize the prior system of grants, create and appoint a grant committee. This alternative would add considerable cost to the City in staff time and increased regulatory requirements.

ATTACHMENTS

1. Resolution authorizing the Mayor to sign agreements with PEG access centers.
2. IGA with Clackamas Community College.
3. IGA with Sabin Schellenberg Center (North Clackamas School District).
4. MOU with Willamette Falls Media Center (WFMC).



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AGREEMENTS (INTERGOVERNMENTAL AND MEMORANDUM OF UNDERSTANDING) WITH PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS CENTERS FOR USE OF PEG FUNDS.

WHEREAS, ORS Chapter 190 allows for units of local government to enter into agreements for the performance of any or all functions and activities which such units have the authority to perform; and

WHEREAS, the City collects funds, as a pass-through, from cable operators in the City; and

WHEREAS, the City desires to fund PEG access centers for the benefit of the residents; and

Now, Therefore, be it Resolved that the City Council of the City of Milwaukie authorizes the Mayor to sign Intergovernmental Agreements and a Memorandum of Understanding with PEG access centers.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

**AGREEMENT BETWEEN
CITY OF MILWAUKIE
AND
CLACKAMAS COMMUNITY COLLEGE**

I. Purpose

- A. This Agreement is entered into between The City of Milwaukie (“City”), a municipal corporation, and Clackamas Community College (“CCC”), an institution of higher learning formed and existing under the authority of ORS Chapter 341.
- B. This Agreement provides for the reimbursement by the City to CCC for capital for facilities and equipment related to Public, Educational and Government (“PEG”) access costs. These reimbursements will assist CCC with the production and cablecasting of the community college educational access television channel(s).

II. Responsibilities

- A. CCC agrees to the following responsibilities under this Agreement:
 - 1. CCC will cablecast programs on educational access channel(s), using CCC’s facilities, subject to the usual operating rules of CCC.
 - 2. The funds provided by this Agreement shall be used only for reimbursement of CCC’s capital facility and equipment costs related to CCC’s production and cablecasting on CCC’s educational access channel(s).
 - 3. CCC shall maintain discrete accounting records of all activities associated with expenditures for which reimbursement is sought under this Agreement. CCC shall use and maintain accounting policies, practices, and procedures which are consistent with generally accepted accounting principles, and in accordance with applicable regulations. On request, CCC shall permit the City to inspect its accounting records and facilities as part of the activities.
 - 4. CCC warrants funds shall not be used to retire any debt or reimburse any person, entity, or municipality for expenditures not related to, or approved by this Agreement.
 - 5. CCC shall be responsible for producing, scheduling and administering the school’s educational access channel(s).

6. CCC shall submit requests for funds to the City's Finance Department, including detailed, paid receipts showing items purchased and prices paid by CCC. CCC further agrees to provide additional information as requested by the City to verify or understand requests for funds.
 - a. CCC may have the City invoiced directly for purchases, given prior approval is received from the City.
 - b. CCC is encouraged to obtain the City's approval prior to making purchases to verify reimbursement requirements and availability of funds.
7. CCC shall send all its normal communications to the City's Finance Department, consisting of, but not limited to:
 - a. Quarterly usage reports showing number of programs broadcast;
 - b. Equipment and usage reports;
 - c. Final approved budget; and
 - d. Annual financial report or audit.

B. City agrees to the following responsibilities under this Agreement:

1. City shall approve or reject requests for funds by CCC. City shall respond with payment or notice of rejection no more than 45 days from its receipt of requests for funds.
2. City shall reimburse CCC for capital costs with funds obtained as PEG funds from City's agreements with cable television franchisees annually, subject to City's approval of each request for reimbursement submitted by CCC.
3. Availability of funds for reimbursement under this Agreement shall be subject to the City receiving PEG funding from cable franchise agreements. If the City does not receive sufficient PEG funds to pay CCC's request, City shall promptly notify CCC and may reduce or eliminate funding in accordance with PEG funds available.
4. City may require CCC to take corrective action to remedy problems with implementation, evaluation, reporting, or administration of activities, to meet compliance standards. CCC shall submit documentation to prove satisfactory correction action has been taken in the time frame set forth by the City. City shall give 30 days written notice to correct non-compliance.

III. Liaison

City liaison:

Reba Crocker, Right-of-way & Contracts Coordinator
Finance Department
10722 SE Main Street
Milwaukie, Oregon 97222
503-786-7519
crocker@milwaukieoregon.gov

CCC liaison:

Sue Goff, Dean of Arts & Sciences
Oregon City Campus
19600 Molalla Ave
Oregon City, OR 97045
503-594-3100
sue.goff@clackamas.edu

IV. Other Terms and Conditions

- A. The City and CCC agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations, including those on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, age or disability.
- B. To the extent applicable, the provisions of Oregon public contracting law are incorporated herein by this reference.
- C. Each party is an independent contractor with regard to the other party and agrees that the nonperforming party has no control over the work and manner in which it is performed. No party is an agent or employee of any other.
- D. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, each of the parties agrees to hold harmless and indemnify the other, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees. It is agreed between the parties that, as between them, CCC exercises control over the operations of its public access studio and cablecasting facilities, and will defend and indemnify City under this paragraph for claims arising therefrom.

- E. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.272 and 30.273.
- F. No party or its employees is entitled to participate in a pension plan, insurance, bonus or similar benefits provided by any other party.
- G. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of six (6) years after receipt of final payment under this Agreement, provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- H. Access to Records. The City and its duly authorized representatives shall have access to the books, documents, papers, and records of CCC which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- I. This contract supersedes and cancels any prior contracts and/or agreements between the parties hereto for similar services.

V. Amendment

This Agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this Agreement only after the written amendment has been signed by both parties.

VI. Term of Agreement

- A. This Agreement becomes effect when it is signed by both parties.
- B. The initial term of the Agreement extends to June 30, 2017.
- C. This Agreement will be automatically renewed for successive terms of one year on each July 1, unless terminated as provided in this Agreement.

VII. Termination of Agreement

- A. This Agreement may be suspended or terminated prior to the expiration of any term by:

- 1. Written notice provided, with or without cause, by either party no less than 30 days prior to the date of termination;
- 2. Written notice, in the case of a default under the terms of this agreement, giving no less than 21 days notice of the alleged default, with opportunity to cure within the 21-day period;
- 3. Mutual written agreement by the City and CCC, or;
- 4. Written notice shall be provided by the City if PEG funds become insufficient, or if there has been a change in federal, state or local laws or regulations causing the activities funded by this Agreement to no longer being eligible for funding. Termination under this paragraph shall be effective immediately.

B. Termination of this Agreement shall not discharge the obligations of CCC accrued prior to termination, including but not limited to, the obligation to allow audit or inspection.



IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and CCC has executed this Agreement on the date herein above first written.

CITY OF MILWAUKIE

CLACKAMAS COMMUNITY COLLEGE

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

**AGREEMENT BETWEEN
CITY OF MILWAUKIE
AND
NORTH CLACKAMAS SCHOOL DISTRICT
(SABIN-SHELLENBERG CENTER)**

I. Purpose

- A. This Agreement is entered into between The City of Milwaukie (“City”), a municipal corporation, and North Clackamas School District (“NCSD”) acting on behalf of the Sabin-Schellenberg Center (“SSC”), a school district formed and existing under the authority of ORS Chapter 332.
- B. This Agreement provides for the reimbursement by the City to SSC for capital for facilities and equipment related to Public, Educational and Government (“PEG”) access costs. These reimbursements will assist SSC with the production and cablecasting of the school’s educational access television channel(s).

II. Responsibilities

- A. SSC agrees to the following responsibilities under this Agreement:
 - 1. SSC will cablecast programs on educational access channel(s), using SSC’s or NCSD’s facilities, subject to the usual operating rules of NCSD and SSC.
 - 2. The funds provided by this Agreement shall be used only for reimbursement of SSC’s capital facility and equipment costs related to SSC’s production and cablecasting on SSC’s educational access channel(s).
 - 3. SSC shall maintain discrete accounting records of all activities associated with expenditures for which reimbursement is sought under this Agreement. SSC shall use and maintain accounting policies, practices, and procedures which are consistent with generally accepted accounting principles, and in accordance with applicable regulations. On request, SSC shall permit the City to inspect its accounting records and facilities as part of the activities.
 - 4. SSC warrants funds shall not be used to retire any debt or reimburse any person, entity, or municipality for expenditures not related to, or approved by this Agreement.
 - 5. SSC shall be responsible for producing, scheduling and administering the school’s educational access channel(s).

6. SSC shall submit requests for funds to the City's Finance Department, including detailed, paid receipts showing items purchased and prices paid by SSC. SSC further agrees to provide additional information as requested by the City to verify or understand requests for funds.
 - a. SSC may have the City invoiced directly for purchases, given prior approval is received from the City.
 - b. SSC is encouraged to obtain the City's approval prior to making purchases to verify reimbursement requirements and availability of funds.
 7. SSC shall send all its normal communications to the City's Finance Department, consisting of, but not limited to:
 - a. Quarterly usage reports showing number of programs broadcast;
 - b. Equipment and usage reports;
 - c. Final approved budget; and
 - d. Annual financial report or audit.
- B. City agrees to the following responsibilities under this Agreement:
1. City shall approve or reject requests for funds by SSC. City shall respond with payment or notice of rejection no more than 45 days from its receipt of requests for funds.
 2. City shall reimburse SSC for capital costs with funds obtained as PEG funds from City's agreements with cable television franchisees annually, subject to City's approval of each request for reimbursement submitted by SSC.
 3. Availability of funds for reimbursement under this Agreement shall be subject to the City receiving PEG funding from cable franchise agreements. If the City does not receive sufficient PEG funds to pay SSC's request, City shall promptly notify SSC and may reduce or eliminate funding in accordance with PEG funds available.
 4. City may require SSC to take corrective action to remedy problems with implementation, evaluation, reporting, or administration of activities, to meet compliance standards. SSC shall submit documentation to prove satisfactory correction action has been taken in the time frame set forth by the City. City shall give 30 days written notice to correct non-compliance.

III. Liaison

City liaison:

Reba Crocker, Right-of-way & Contracts Coordinator
Finance Department
10722 SE Main Street
Milwaukie, Oregon 97222
503-786-7519
crockerr@milwaukieoregon.gov

SSC liaison:

Deborah Barnes
14450 SE Johnson Road
Milwaukie, Oregon 97267
503-353-5910 x 37640
barnesd@nclack.k12.or.us

IV. Other Terms and Conditions

- A. The City and SSC agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations, including those on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, age or disability.
- B. To the extent applicable, the provisions of Oregon public contracting law are incorporated herein by this reference.
- C. Each party is an independent contractor with regard to the other party and agrees that the nonperforming party has no control over the work and manner in which it is performed. No party is an agent or employee of any other.
- D. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, each of the parties agrees to hold harmless and indemnify the other, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees. It is agreed between the parties that, as between them, SSC exercises control over the operations of its public access studio and cablecasting facilities, and will defend and indemnify City under this paragraph for claims arising therefrom.
- E. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.727 and 30.273.

- F. No party or its employees is entitled to participate in a pension plan, insurance, bonus or similar benefits provided by any other party.
- G. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of six (6) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- H. Access to Records. The City and its duly authorized representatives shall have access to the books, documents, papers, and records of SSC which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- I. This contract supersedes and cancels any prior contracts and/or agreements between the parties hereto for similar services.

V. Amendment

This Agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this Agreement only after the written amendment has been signed by both parties.

VI. Term of Agreement

- A. This Agreement becomes effect when it is signed by both parties.
- B. The initial term of the Agreement extends to June 30, 2017.
- C. This Agreement will be automatically renewed for successive terms of one year on each July 1, unless terminated as provided in this Agreement.

VII. Termination of Agreement

- A. This Agreement may be suspended or terminated prior to the expiration of any term by:
 - 1. Written notice provided, with or without cause, by either party no less than 30 days prior to the date of termination;

- 2. Written notice, in the case of a default under the terms of this agreement, giving no less than 21 days notice of the alleged default, with opportunity to cure within the 21-day period;
- 3. Mutual written agreement by the City and SSC, or:
- 4. Written notice shall be provided by the City if PEG funds become insufficient, or if there has been a change in federal, state or local laws or regulations causing the activities funded by this Agreement to no longer being eligible for funding. Termination under this paragraph shall be effective immediately.

C. Termination of this Agreement shall not discharge the obligations of SSC accrued prior to termination, including but not limited to, the obligation to allow audit or inspection.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and SSC has executed this Agreement on the date herein above first written.

CITY OF MILWAUKIE

**SABIN SCHELLENBERG
CENTER**

Signature

Signature

Printed Name & Title

Kerensa Mauck, Director, Business Operations
Printed Name & Title

Date

Date

**MEMORANDUM OF UNDERSTANDING BETWEEN
CITY OF MILWAUKIE
AND
FRIENDS OF WILLAMETTE FALLS MEDIA CENTER**

I. Purpose

- A. This Agreement is entered into between The City of Milwaukie (“City”), a municipal corporation, and Friends of Willamette Falls Media Center (“FoWFMC”), a 501(c)(3) corporation, established on October 17, 2011.
- B. This Agreement provides for the reimbursement by the City to FoWFMC for capital for facilities and equipment related to Public, Educational and Government (“PEG”) access costs. These reimbursements will assist FoWFMC with the production and cablecasting of the Public access television channel(s).

II. Responsibilities

- A. FoWFMC agrees to the following responsibilities under this Agreement:
 - 1. Residents of the City shall be allowed full access to the FoWFMC studio to produce and edit TV programs for airing on the public access channel(s), subject to the usual operating rules and procedures of FoWFMC.
 - 2. Residents of the City shall be allowed to cablecast programs on access channel(s) using FoWFMC’s facilities. In addition, residents shall be allowed to submit readerboard notices for cablecasting subject to the usual operating rules of FoWFMC.
 - 3. FoWFMC shall cablecast programs on access channel(s), using FoWFMC’s facilities, subject to the usual operating rules of FoWFMC.
 - 4. The funds provided by this Agreement shall be used only for reimbursement of FoWFMC’s capital facility and equipment costs related to FoWFMC’s production and cablecasting on FoWFMC’s access channel(s).
 - 5. FoWFMC shall maintain discrete accounting records of all activities associated with expenditures for which reimbursement is sought under this Agreement. FoWFMC shall use and maintain accounting policies, practices, and procedures which are consistent with generally accepted accounting principles, and in accordance with applicable regulations. On request, FoWFMC shall permit the City to inspect its accounting records and facilities as part of the activities.

6. FoWFMC warrants funds shall not be used to retire any debt or reimburse any person, entity, or municipality for expenditures not related to, or approved by this Agreement.
7. FoWFMC shall be responsible for producing, scheduling and administering the public access channel(s).
8. FoWFMC shall submit requests for funds to the City's Finance Department, including detailed, paid receipts showing items purchased and prices paid by FoWFMC. FoWFMC further agrees to provide additional information as requested by the City to verify or understand requests for funds.
 - a. FoWFMC may have the City invoiced directly for purchases, given prior approval is received from the City.
 - b. FoWFMC is encouraged to obtain the City's approval prior to making purchases to verify reimbursement requirements and availability of funds.
9. FoWFMC shall send all its normal communications to the City's Finance Department, consisting of, but not limited to:
 - a. Quarterly usage reports showing number of programs broadcast;
 - b. Equipment and usage reports;
 - c. Final approved budget; and
 - d. Annual financial report or audit.

B. City agrees to the following responsibilities under this Agreement:

1. City shall approve or reject requests for funds by FoWFMC. City shall respond with payment or notice of rejection no more than 45 days from its receipt of requests for funds.
2. City shall reimburse FoWFMC for capital costs with funds obtained as PEG funds from City's agreements with cable television franchisees annually, subject to City's approval of each request for reimbursement submitted by FoWFMC.
3. Availability of funds for reimbursement under this Agreement shall be subject to the City receiving PEG funding from cable franchise agreements. If the City does not receive sufficient PEG funds to pay FoWFMC's request, City shall promptly notify FoWFMC and may be reduce or eliminate funding in accordance with PEG funds available.
4. City may require FoWFMC to take corrective action to remedy problems with implementation, evaluation, reporting, or administration of activities, to meet compliance standards. FoWFMC shall submit documentation to

prove satisfactory correction action has been taken in the time frame set forth by the City. City shall give 30 days written notice to correct non-compliance.

III. Liaison

City liaison:

Reba Crocker, Right-of-way & Contracts Coordinator
Finance Department
10722 SE Main Street
Milwaukie, Oregon 97222
503-786-7519
crockerr@milwaukieoregon.gov

FoWFMC liaison:

Melody Ashford, Director
1101 Jackson Street
Oregon City, OR 97045
(503) 650-0275
melody@wfmstudios.org

IV. Other Terms and Conditions

- A. The City and FoWFMC agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations, including those on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, age or disability.
- B. To the extent applicable, the provisions of Oregon public contracting law are incorporated herein by this reference.
- C. Each party is an independent contractor with regard to the other party and agrees that the nonperforming party has no control over the work and manner in which it is performed. No party is an agent or employee of any other.
- D. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, each of the parties agrees to hold harmless and indemnify the other, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees. It is agreed between the parties that, as between them, FoWFMC exercises control over the operations of its public access studio and cablecasting facilities, and will defend and indemnify City under this paragraph for claims arising therefrom.

- E. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.272 and 30.273.
- F. No party or its employees is entitled to participate in a pension plan, insurance, bonus or similar benefits provided by any other party.
- G. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of six (6) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- H. Access to Records. The City and its duly authorized representatives shall have access to the books, documents, papers, and records of FoWFMC which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- I. This contract supersedes and cancels any prior contracts and/or agreements between the parties hereto for similar services.

V. Amendment

This Agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this Agreement only after the written amendment has been signed by both parties.

VI. Term of Agreement

This Agreement shall become effective upon final signature and shall expire, unless otherwise terminated or extended, on June 30, 2018. The City shall also retain the right to renew for five (5) two-year extensions to the Agreement.

VII. Termination of Agreement

- A. This Agreement may be suspended or terminated prior to the expiration of any term by:
 - 1. Written notice provided, with or without cause, by either party no less than 30 days prior to the date of termination;

- 2. Written notice, in the case of a default under the terms of this agreement, giving no less than 21 days notice of the alleged default, with opportunity to cure within the 21-day period;
- 3. Mutual written agreement by the City and FoWFMC, or:
- 4. Written notice shall be provided by the City if PEG funds become insufficient, or if there has been a change in federal, state or local laws or regulations causing the activities funded by this Agreement to no longer being eligible for funding. Termination under this paragraph shall be effective immediately.

C. Termination of this Agreement shall not discharge the obligations of FoWFMC accrued prior to termination, including but not limited to, the obligation to allow audit or inspection.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and FoWFMC has executed this Agreement on the date herein above first written.

CITY OF MILWAUKIE

FRIENDS OF WILLAMETTE FALLS MEDIA CENTER

Signature

Signature

Printed Name & Title

Melody Ashford, Manager

Printed Name & Title

Date

Date



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 3. B.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager
Alma Flores, Community Development Director

Subject: **Visioning Advisory Committee Appointments**

From: David Levitan, Senior Planner
Denny Egner, Planning Director

Date: July 11, for July 19, 2016, Regular Session

ACTION REQUESTED

Adopt a resolution appointing members to the Visioning Advisory Committee (VAC).

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

July 5, 2016: The Council heard the Steering Committee's recommendation for 14 members for the VAC and provided input on a potential 15th member.

June 23, 2016: The Council heard an update on the status of the Visioning Advisory Committee recruitment process.

May 20, 2016: Recruitment efforts were deployed. Online and print applications were made available to the public with a closing date of June 17.

May 3, 2016: The Council heard an update on the status of the Community Vision and Action Plan, including staff's proposal for a Visioning Advisory Committee.

BACKGROUND

The City of Milwaukie is in the early stages of developing a Community Vision. As part of the visioning process, the Council directed staff to form a Visioning Advisory Committee (VAC) comprised of various stakeholders in the Milwaukie community that are interested in helping shape the future of the City. An application for the VAC developed by staff and was advertised via the City's website, social media accounts, the June edition of The Pilot, the May 22 Farmer's Market booth, and emails to the NDA and Boards and Commissions email lists.

The closing date for VAC applications was June 17, and 52 people applied. Applicants included:

- 44 City residents;
- At least three applicants from each of the city's seven residential neighborhoods;
- Six local business owners;
- Five local employees; and
- Two high school students

DISCUSSION

Members of the Visioning Steering Committee (Mayor Gamba, Councilor Parks, City Manager Bill Monahan, Community Development Director Alma Flores, Planning Director Denny Egner, Senior Planner David Levitan, and Community Programs Coordinator Jason Wachs) reviewed the 52 applications and met during the week of June 27 to develop a list of recommended VAC members for the Council. Staff presented the Steering Committee's list of 14 recommended members (one member that the committee was recommending removed himself from consideration on July 5) during the Council's July 5 regular meeting. The Council voiced their approval of the recommended members, and directed the Steering Committee to recommend one additional VAC member and bring the total membership up to 15 people.

On July 8, the Steering Committee came to a consensus on the recommended 15th member for the VAC. A resolution appointing the 15 recommended members (listed below) is attached to this staff report.

Based on input received from the City Council and the project consultants, staff is also recommending that it continue VAC recruitment efforts and have the option to add up to two additional members in an effort to increase diversity and include additional groups and stakeholders that are not currently represented on the VAC.

List of Recommended VAC Members

Adrianna Stanley	Greg Baartz-Bowman
Angelene Falconer	Howie Oakes
Arianna Van Bergen	Jessica Neu
Barbara Eiswerth	Misty Collard
Ben Rousseau	Rochelle MacDonald
Bryce Magorian	Shannah Anderson
Chris Davis	Zara Logue
Douglas Craig	

CONCURRENCE

No other departments have reviewed this report.

FISCAL IMPACTS

N/A

WORK LOAD IMPACTS

N/A

ATTACHMENTS

1. Resolution Appointing Members to the Visioning Advisory Committee



CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
APPOINTING 15 MEMBERS TO THE VISIONING ADVISORY COMMITTEE.**

WHEREAS, the City of Milwaukie is undertaking a process to develop a new Community Vision and Action Plan; and

WHEREAS, community outreach and public involvement will be an important part of the process and the City Council identified the establishment of a Visioning Advisory Committee as an integral component in the development of the Vision; and

WHEREAS, Milwaukie Charter Section 26 provides that, "the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body;" and

WHEREAS, the Visioning Advisory Committee was widely advertised and 52 applications were received; and

WHEREAS, the Vision Steering Committee reviewed the applications and identified 15 individuals that represented a diversity of neighborhoods, interests and ideas.

Now, Therefore, be it Resolved that the following individuals be named to the Visioning Advisory Committee:

Adrianna Stanley, Angelene Falconer, Arianna Van Bergen, Barbara Eiswerth, Ben Rousseau, Bryce Magorian, Chris Davis, Douglas Craig, Greg Baartz-Bowman, Howie Oakes, Jessica Neu, Misty Collard, Rochelle MacDonald, Shannah Anderson, Zara Logue

Introduced and adopted by the City Council on **July 19, 2016.**

This resolution is effective immediately.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 3. C.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council
Through: Bill Monahan, City Manager
Subject: **Creation of Library Construction Task Force**
From: Katie Newell, Library Director
Date: July 11, 2016

ACTION REQUESTED

Approve the attached resolution creating the Library Construction Task Force.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Bond Measure 3-477 funding up to \$9.2 million to renovate and expand the Ledding Library was passed by the citizens of Milwaukie on May 17, 2016. The Library Services Expansion Task Force, having fulfilled their tasks, was dissolved July 5, 2016, at Council's Regular Session.

BACKGROUND

At its July 5, 2016, Work Session meeting, City Council discussed the formation of a Library Construction Task Force to offer community input into the expansion of the Ledding Library and to assist the director and staff in moving forward with expansion and renovation plans.

Composition of the task force could include:

- Up to two Council members
- One Library Board member
- Up to six at-large community members from the library service area with one position reserved for a member from the Arts Committee, if they choose to serve.

The Library Director should be ex officio and serve as the primary staff representative to assist the Task Force. It should have available to it resources from various city departments including designated staff from the Planning, Engineering, Facilities and Finance Departments. The Task Force would initially consist of seven members with the option to expand to a maximum of nine, if so needed. Knowledge and/or experience with commercial construction and/or building design will be sought.

This Task Force would exist for the duration of the building project. The Task Force would provide knowledge to effectively assist the Library Director and staff in working with the Project Manager, Architect and Construction in the execution of the planning, design and renovation/expansion of the Ledding Library.

CONCURRENCE

The Library Director supports the creation of the Library Construction Task Force.

FISCAL IMPACTS

None at this time.

WORK LOAD IMPACTS

Workload impacts will be moderate at the beginning of the Task Force, but are expected to increase as plans are developed and building begins. Library Director Katie Newell has been identified as the staff liaison to this new Task Force and will provide assistance and guidance.

ATTACHMENTS

1. Resolution



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CREATING THE LIBRARY CONSTRUCTION TASK FORCE.

WHEREAS, the Ledding Library (Library) has served the Milwaukie community since 1964 at its present location; and

WHEREAS, the Library has been found to have insufficient size to house all the facilities needed to serve the City of Milwaukie and the service area; and

WHEREAS, the City of Milwaukie passed Bond Measure 3-477 to provide funding to renovate and expand the Library; and

WHEREAS, Council has recommended the formation of a Library Construction Task Force to assist the Library Director and Staff in moving forward with the expansion and renovation of the Library,

Now, Therefore, be it Resolved that the City Council:

1. Creates the Library Construction Task Force.
2. Authorizes the Library Director to bring forth names of representatives for approval by Council to fill the positions on the Task Force from the following:
 - a. Up to two City Councilors
 - b. One Library Board member
 - c. Up to six at-large community members from the library service area with one position reserved for a member from the Art Community
3. The Task Force will provide knowledge to assist the Library Director and staff to effectively work with the Project Manager, Architect and Construction Manager in the planning, design and construction of the Library.
4. Designates the Task Force will cease to function upon the successful completion of the Library expansion/renovation.

Introduced and adopted by the City Council on July 19, 2016.

This resolution is effective on July 19, 2016.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



**Regular Session
Agenda Item No.**

5

Public Hearing



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 5. A.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Adopt Standards, Criteria and Policy Directives for
the Hiring of the City Manager**

From: Gary Rebello, HR Director

Date: July 19, 2016

ACTION REQUESTED

Staff recommends the City Council provide the public the opportunity to comment on the attached standards, criteria and policy directives to be used to hire the City Manager. Once comment has been received the Council should vote to adopt the attached resolution in accordance with ORS 192.660(7)(a) and (b).

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Prior Council discussions and community and staff stakeholder interviews were conducted to establish the hiring criteria.

BACKGROUND

Under ORS 192.660(a) and (b) the City Council may use Executive Session to discuss the qualifications, selection and hiring of the City Manager provide the Council 'has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.'

CONCURRENCE

FISCAL IMPACTS

None

WORK LOAD IMPACTS

None

ALTERNATIVES

Do not hold any executive sessions during the recruitment and selection of the City Manager.

ATTACHMENTS

1. City Manager Hiring Criteria Recruitment Profile
2. Resolution to adopt City Manager hiring criteria via a public hearing



City of Milwaukie City Manager

Search conducted by:



www.waldronhr.com

COMMUNITY

Located six miles south of downtown Portland, on the banks of the Willamette River, the City of Milwaukie offers a small-town feel with easy access to the region's urban center, recreational activities, and services. The suburban City of 20,491 is economically linked with the greater Portland Metropolitan area.

Named one of the best places to raise a family, Milwaukie provides a clean environment, good transportation, schools, and health care. The Sunday Farmers' Market, First Fridays, and the on-going poetry and artist series are just a few of the many cultural offerings available. Nearby recreational opportunities include boating on the Willamette River, kayaking on the Clackamas River, fishing, hiking or mountain biking in one of the more than 100 parks in Clackamas County.

Downtown Milwaukie is undergoing a revival with plans for new apartments and retail space that accompany the redeveloped Riverfront Park. Contributing to the revitalization and also enhancing transportation services is the Portland-Milwaukie Light Rail transit line that opened in September of 2015. The new Orange Line extends the region's light-rail network by 7.3 miles from Portland State University to South Waterfront, SE Portland, Milwaukie and north Clackamas County. The City is comprised of seven neighborhood districts and two business industrial districts that advocate for community and business interests. Milwaukie is also home to Dark Horse Comics' international headquarters, Bob's Red Mill, a modern-day gristmill and natural foods company, and Blount International Inc., a publicly traded Fortune 500 company.

The City of Milwaukie has committed to achieving and maintaining: a sense of place, history, and future that defines the City and distinguishes it from other areas; a livable, safe environment, including preservation and enhancement of both built and physical environments; and private and public partnerships that provide for the maximization of business and individual opportunities.



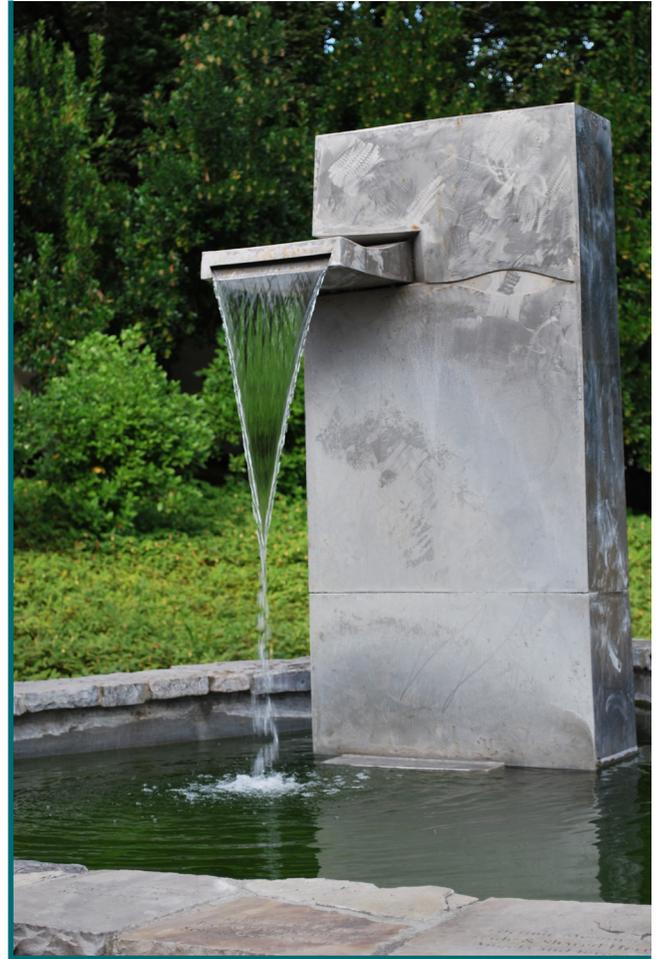
CITY STRUCTURE

The City of Milwaukie has a Council-Manager form of government. The five elected members, a Mayor and four Councilors, serve as representatives of the City's population while concentrating on policy issues that are responsive to the community's needs. The Mayor and City Councilors are elected at-large and serve staggered four-year terms. The Council appoints the City Manager, City Attorney, and Municipal Judge.

Milwaukie employs 142.5 full-time equivalent staff members and works collaboratively with its two unions. The 2017-2018 Biennial Budget of \$115 million is closely aligned with Council goals and the administration is committed to professionalism, efficiency, and customer service.

The City operates its own police department, municipal court, water, wastewater, and stormwater utilities; and provides street operations, planning, building inspections, public records, engineering, community development and library services. Internal services include Human Resources, Finance and Information Technology.

Milwaukie is located in Clackamas County and effectively partners with the County on a routine basis. It is also located within the jurisdiction of Metro, the tri-county urban services district based in Portland and TriMet, the tri-county transportation district of Oregon. Clackamas Fire District #1 provides fire and emergency services and the North Clackamas Parks and Recreation District maintains the City's parks and provides other recreational services.



POSITION

The City Manager is appointed by the City Council and serves as the administrative head of the City assuming full management responsibility, leadership, and accountability for all City operations. The City Manager establishes, within City policy and budget the most appropriate service and staffing levels and allocates resources accordingly. The Manager also collaborates with department heads on departmental strategic planning and studies of City services to ensure they are provided in the most efficient and effective manner.

The City Manager directs the development and implementation of the City's goals, objectives, policies, and priorities and routinely provides advice and assistance to the Mayor and Council on a wide variety of issues. In addition, the City Manager represents the City and the City's interests on various regional committees and taskforces and to citizen involvement groups.



PRIORITIES

- Build strong relationships with the Mayor and each Council member, the community, and region at large. Establish trust, confidence and open communication to effectively advise, prioritize, and implement council goals.
- Participate and proactively engage in strategic, long term planning for the City including the 2040 Visioning process and the new Comprehensive Plan. Share best practices and knowledge from prior experiences to create a strong action plan and ensure success.
- In partnership with the Mayor, City Council, and select Advisory Committees, identify and implement transportation related projects as the City continues to grow. Consider the proper planning, timing, funding, and community support to realize projects that include bike and pedestrian paths, greenways, sidewalks, ADA compliance, and safe routes to schools.
- Execute on the \$10.2 million capital improvement project to renovate and expand the Ledding Library. Collaborate with the committees to solidify a plan and design that creates a functional, multi-purpose gathering place.
- With the anticipated urban renewal plan adoption for downtown and central Milwaukie, develop the strategy and structure, establish clear goals and identify and prioritize potential projects to help catalyze business development.
- Actively identify a variety of housing options and prioritize planning for recognized deficiencies including potential zoning changes and partnering effectively with Clackamas County to maximize county-owned affordable housing opportunities.
- Partner with North Clackamas Parks and Recreation District, the Park and Recreation Board, and the Riverfront Task Force to identify grants and other funding options to complete the development of four neighborhood parks and the additional phases of Riverfront Park and North Clackamas Park.
- Develop and maintain positive long-term relationships with Clackamas County and Metro. Effectively partner and look for opportunities to collaborate while protecting Milwaukie's identity and interests as the City continues to grow.



IDEAL CANDIDATE

The City of Milwaukie seeks a City Manager that is creative and innovative and brings a fresh, yet experienced voice and perspective to problem solving. With a proven ability to move projects and initiatives forward, the ideal candidate will successfully guide the City through this exciting time of transition and growth.

The City Manager has a strong history of developing effective relationships with elected officials and effortlessly partners with the Mayor and City Council to provide sound advice and guidance when necessary. Considered a calculated risk taker, the ideal candidate does proper due diligence and monitors best practices in order to drive efficiency and inform decision making. The preferred candidate is an active listener that values honesty and integrity and believes in fostering mutual respect at all levels.

The successful candidate has a strong background in strategic planning and execution and is considered fiscally responsible. The preferred candidate has experience with urban renewal, specifically with identifying and prioritizing projects. In addition, the City Manager reflects Oregon's values regarding the environment, prioritizes sustainability, and works to drive process improvement initiatives.

A proactive leader, the City Manager creates a forward thinking culture that encourages and supports collaboration amongst staff. The successful candidate has a strong background in managing and empowering employees and believes in professional development, retention and succession planning. The City Manager believes in work-life balance and above all has a good sense of humor.

The ideal candidate is a dynamic leader that enjoys being part of the community, participating in multiple activities and events. Considered to be approachable, the City Manager recognizes the importance of relationships and partnerships at all levels and has a history of engaging in effective, meaningful communication with business and community leaders and key stakeholders. The preferred candidate maintains an understanding of the issues affecting the community and leverages that knowledge to drive decisions.



QUALIFICATIONS

At least seven years of progressively responsible experience in municipal government including five years of administrative or leadership responsibility. Strong managerial experience and the ability to work closely with elected officials is essential. An exceptional ability to develop effective partnerships is required. A Bachelor's degree from an accredited college or university or any equivalent combination of education and experience.



COMPENSATION AND BENEFITS

Salary Range: \$116,667 - \$157,872

- Oregon Public Employees Retirement System (PERS). The City pays both the employer and employee portion
- Deferred Compensation Plan with a City contribution of 2.5%
- Generous Medical, Dental, and Vision Plans
- City paid Life and Long Term Disability Insurance
- Available Flexible Spending and HRA VEBA Accounts as well as Supplemental Life Insurance
- Vacation, Management, Wellness Days, and Sick Leave Programs
- Vehicle Allowance

TO BE CONSIDERED

Please go to candidateportal.waldronhr.com and submit your resume and cover letter expressing your interest in the City of Milwaukie and fit for the City Manager role. Cover letters may be addressed to Heather Gantz.

The City of Milwaukie is an Equal Opportunity Employer and assures fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, national origin, age, sex, religious affiliation, marital status, mental or physical disability, gender, sexual orientation, veteran status, or any other protected class under State and/or Federal law and with proper regard for their privacy and constitutional rights as citizens.

Heather Gantz, Branch Director
heather@waldronhr.com
503-620-1266

Robert Colichio, Consultant
robert@waldronhr.com
503-620-1106





Waldron is honored to work with the City of Milwaukie in the search for a City Manager. The City of Milwaukie does amazing work, and we are doing our best to recruit a talented team member who will accelerate this mission. As the consulting partner strategic leaders choose to help attract, engage, and inspire effective leaders, Waldron provides a unique combination of executive search, leadership development, and career transition services across sectors and industries. Our passion is helping people and organizations realize their full potential and increase their impact.



CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING STANDARDS, CRITERIA AND POLICY DIRECTIVES FOR THE HIRING OF THE CITY MANAGER

WHEREAS, the current City Manager, Bill Monahan, is leaving the City's employment to retire on October 17, 2016; and

WHEREAS, the City Council is beginning the process of hiring a replacement and has hired the Waldron firm to assist in the recruitment of a new City Manager; and

WHEREAS, the City Council may need to conduct one or more executive sessions to consider candidates for the position of City Manager; and

WHEREAS, pursuant to ORS 192.660(7)(a) and (b), it is permissible to conduct an executive session to consider employment of a chief executive officer but there are prerequisites; and

WHEREAS, the central requirement is that, prior to conducting any executive session on the matter, there must be a public hearing at which: 1) the public has an opportunity to comment on the employment of a City Manager; and 2) the Council adopts the standards, criteria and policy directives to be used in hiring for that position; and

WHEREAS, the Waldron firm has prepared a recruitment brochure which sets out standards, criteria and policy directives which the Council will use in the recruitment of a new City Manager; and

WHEREAS, at the City Council meeting of July 19, 2016, the public was given the opportunity to comment on the employment of a City Manager and the criteria to be used in the hiring process;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon, that:

Section 1. The brochure prepared by the Waldron firm, attached as Exhibit A, is adopted as the standards, criteria and policy directives to be used by the City Council in the hiring of a new City Manager.

Section 2. This resolution is effective immediately.

Introduced and adopted by the City Council on July 19, 2016.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 5. B.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Code Amendments to Regulate Marijuana
Businesses**

From: Dennis Egner, Planning Director

Date: July 6, 2016

ACTION REQUESTED

Approve application ZA-2016-001 and Findings of Approval found in Attachment 1 Exhibit A. This action results in zoning ordinance text amendments to regulate marijuana businesses in Milwaukie.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

- **May 24, 2016:** The Milwaukie Planning Commission voted to recommend that the Council adopt the proposed code amendments.
- **January 5 and 19, 2016:** The Milwaukie City Council discussed code concepts and provided general direction for development of a set of regulations for marijuana businesses. Direction included: 1) for retail sales outlets, employ 1000 ft buffers from schools and other outlets; 2) allow indoor grow sites in the M zone along Johnson Creek Blvd, allow them by conditional use in the BI zone, and prohibit them in the NMIA; 3) allow processing, research, testing, and warehousing consistent with underlying zoning provided odors are controlled.
- **April 7, 2015:** The Council adopted zoning amendments to regulate medical marijuana dispensaries. The regulations allow dispensaries in any zone where a pharmacy is permitted and impose the following additional regulations: 1) a 1000 ft buffer is required from schools and from other dispensaries; 2) colocation with another business is prohibited; 3) products are prohibited from being visible from outside the dispensary; and 4) the hours of operation are limited to the hours between 8:00 a.m. and 10:00 p.m.
- **February 3, 2015:** The Council confirmed a staff code determination that marijuana grow operations are not permitted in the City's industrial zones given that agricultural use is not listed as an allowed use in the zones.
- **September 2, 2014:** In advance of the vote on state Measure 91 to legalize recreational marijuana, the Council imposed a 10% local tax on the sale of recreational marijuana products.
- **February 25 and April 15, 2014:** The Council approved and extended a temporary ban on the opening of medical marijuana dispensaries. The ban was lifted in 2015 with adoption of the zoning provisions for medical marijuana dispensaries.

BACKGROUND

A. State Law

In the 2015 legislative session, the Oregon State Legislature passed a series of bills addressing marijuana businesses, including House Bill 3400, which expands upon the framework of Measure 91 (the voter-approved act legalizing recreational marijuana) and the previous state regulations affecting medical marijuana. In October 2015, the Oregon Liquor Control Commission (OLCC) adopted temporary rules to regulate the recreational marijuana industry in Oregon. Final rules became effective on June 30, 2016.

The OLCC began taking applications for recreational marijuana businesses in January 2016. State-wide as of July 11, the OLCC has approved 107 producer (grow-site) licenses and one warehouse license. It is expected that they will begin to issue processor and retailer licenses in the next few months. For more information about licensing, visit:

https://www.oregon.gov/olcc/marijuana/Documents/mj_app_stats_by_county.pdf

B. Proposal

The proposed text amendments are intended to regulate retail sales, testing labs and research facilities, processing facilities, warehousing, and production/growing. Each is addressed in detail below:

Retail Sales – In 2015, the City of Milwaukie adopted local regulations for medical marijuana dispensaries. The local regulations essentially allowed dispensaries anywhere that pharmacies were permitted consistent with state mandated buffering requirements for 1000-ft buffers around schools and other dispensaries. Milwaukie added 1000-ft buffers around two former schools where many youth related activities are held. The proposal resulted in dispensaries being allowed in all of the commercial and mixed use zones except for the C-N Neighborhood Commercial Zone and the B-I Business Industrial Zone. In the M-Manufacturing Zone and the Tacoma Station Overlay, dispensaries generally need to be located in a building with a permitted manufacturing use. The northern sub area of the Tacoma Station Overlay does allow the opportunity for stand-alone retail use.

The proposed changes merge recreational sales with medical dispensaries and make zoning requirements the same for both types of retail marijuana businesses including the 1000-ft separation between retail stores.

Testing Labs/Research Facilities – Testing labs and research facilities are considered types of production office use similar to a medical or dental lab. They are allowed in any zone where an office use or an industrial processing use is allowed. Limitations specific to the zone apply. A code standard is proposed to address potential odor problems resulting from these uses.

Processing Facilities – Processing facilities generally involve the transformation of plant materials into oils or resins or into other products such as edibles. Processing under state rules does not include packaging, but Milwaukie zoning regulations would consider packaging and processing to both be industrial/manufacturing uses. Processing facilities are allowed in all industrial and manufacturing zones and to a limited extent in some commercial zones. No changes are proposed as to where these uses may be permitted except that in the BI zone a conditional use permit would be required. A code standard is proposed to address potential odor problems resulting from these uses.

Warehousing – Warehousing for marijuana businesses is allowed in the following zones: Manufacturing – M, Tacoma Station Area Manufacturing - M-TSA, and the Business Industrial B-I zones. A code standard is proposed to address potential odor problems resulting from these uses.

Production/Growing – Under current standards, Milwaukie considers production or growing of marijuana plants an agricultural use. Agriculture is only listed as a permitted use in the following zones:

- Low Density Residential: R-10, R-7, and R-5
- Medium and High Density Residential: R-3, R-2.5, R-2, R-1, and R1-B
- Commercial Zones: C-G and C-L

Agricultural use is not an allowed use in any other zones. The code places limitations on livestock and chickens and in residential zones, restricts agricultural sales only to those that occur as part of a home occupation.

The proposed code changes include the following:

- Residential Zones – Proposed code changes require medical marijuana grow operations to occur only as home occupations and indoor with ventilation and odor control equipment. Recreational marijuana growing is limited to that which is for personal use only and may occur outdoors subject to state regulations.
- Commercial Zones – Commercial recreational or medical grow operations are not allowed. Growing for personal use is allowed.
- Industrial Zones – Regulations are proposed to vary by area. Each area is addressed below:
 - M-Zone along Johnson Creek Boulevard in northeast Milwaukie – Recreational and medical marijuana grow operations are allowed as permitted uses provided that the operations are fully indoors and utilize required ventilation and odor control equipment.
 - BI-Zone– Recreational and medical marijuana grow operations are allowed as conditional uses provided that the operations are fully indoors and utilize required ventilation and odor control equipment.
 - M-Zone and M-TSA Zones within the North Milwaukie Industrial Area (NMIA) – The Planning Commission has recommended that grow operations be allowed in this area subject to conditional use approval. The staff recommendation had been to prohibit grow operations and reconsider the use following completion of the NMIA plan project.

C. Planning Commission Action

The Planning Commission held a public hearing on this application on March 24, 2016 and voted 6-1 to recommend that the Council approve the proposal. Changes recommended by the Commission have been incorporated into the draft ordinance and the supplemental findings presented to the Commission have been incorporated into the recommended findings included as Exhibit A of Attachment 1. Commissioner Abma voted against the proposal expressing concern about allowing marijuana production in the NMIA in advance of the NMIA study.

KEY ISSUES/ANALYSIS

Summary

Staff has identified three key issues for the Council's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1 – Exhibit A) and generally require less analysis and discretion by the Council.

A. Are the proposed development standards adequate?

Proposed development standards for recreational marijuana stores are proposed to be the same as those developed for medical marijuana dispensaries. It is assumed that the potential impacts from recreational stores will be similar and will be adequately managed by the standards.

The larger question is whether standards associated with security and odor control are adequate. As written, security and odor control standards apply to production, processing, warehousing, testing, and research facilities. With adoption, all of these uses will be required to be located indoors and have an activated carbon filter ventilation system. This type of system is known to do a good job of managing off-site odor problems.

B. Should the City impose special Energy Use standards?

Lighting and ventilation systems for indoor growing facilities require a high amount of electrical energy. To mitigate environmental impacts from high energy use, the initial draft of proposed standards included a provision to require production and processing facilities to demonstrate that their electrical energy source would be from 100% renewable energy sources. The City attorney recommended that if the City were to employ this type of standard, that it be done as part of the City's business regulations (MMC Title 5) instead of through the land use provisions of the zoning ordinance (MMC Title 19). For this reason, the Planning Commission did not make a formal recommendation related to energy use.

Following the Planning Commission hearing, staff conducted additional research on the issue of energy use. The Energy Trust of Oregon has an incentive program to encourage growers to reduce energy consumption through the use of low-energy light bulbs and other techniques. To date, only a small number of growers have participated in the Energy Trust program. Adam Bartini, staff member at the Energy Trust, said that it was still too early to tell what might be the most effective tools to reduce energy use by the industry. He said he is serving on a OLCC task force to assess energy and water use by the marijuana industry and to develop recommendations for managing impacts. He noted that the task force is expected to have recommendations prepared by the end of September.

Based on the ongoing work at the state level, staff is recommending that the City wait until the state task force completes its work before enacting any energy conservation standards for marijuana grow operations. Staff will schedule a work session on the topic in the fall.

C. Should production (grow sites) be allowed in the North Milwaukie Industrial Area?

Following testimony from three people asking that the City allow marijuana production in the NMIA, the Planning Commission voted 6-1 to recommend that the City allow grow sites in the district by conditional use.

Currently, the City has taken the position that growing marijuana is an agricultural use and the zoning ordinance does not allow agricultural use in the City's industrial zones. The proposed amendments would allow production facilities outright in the Johnson Creek industrial area and by conditional use in the Business Industrial zone along International Way. As recommended by the Planning Commission, the proposal would allow production in the NMIA through the conditional use process.

A few key issues to consider include:

- The City and Clackamas County are just beginning an intensive planning process for the NMIA. The NMIA plan is a grant funded project intended to result in a development and implementation plan for the area. The project is expected to take over a year to complete. It is unclear how marijuana businesses will fit the overall vision for redevelopment of this area.
- One of the reasons that agricultural use is not listed as a permitted use in the City's industrial zones is that agricultural uses are typically not very employee intensive. An argument can be made that marijuana production is a more intensive form of agricultural use that on average has a higher number of employees per acre than many of the uses that are currently permitted in the City's industrial zones.
- There are numerous underutilized warehouse buildings in the NMIA. Staff has fielded many questions from individuals who have wanted to start grow operations within these buildings.
- State law provides for two tiers of growing operations for recreational marijuana: Tier 1 – allows 5,000 sq ft of mature plant canopy; Tier 2 – allows for 10,000 sq ft of mature plant canopy. A grow operation would have at least an equal amount of square footage dedicated to growing immature plants.
- The conditional use process requires a public hearing before the Planning Commission to ensure that the use is reasonably compatible with nearby uses and impacts can be mitigated. Conditions for approval can be established as part of the approval process or they can be included in the zoning code. Conditions could include:
 - Size limitations (e.g. 5,000 sq ft maximum);
 - Buffers (e.g. 1,000 ft between grow sites); or
 - Limitations on how many grow operations can occur within a building or on a property (e.g. one grow operation per property).

CONCLUSIONS

The Planning Commission has recommended the following:

1. Approval of the proposed Zoning Ordinance text amendments to regulate marijuana businesses.
2. Adoption of the attached Findings of Approval.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

MMC Section 19.902 Amendments to Maps and Ordinances

MMC Section 19.1008 Type V Review

This application is subject to Type V review, which requires the Council to consider whether the proposal complies with the code sections shown above. The criteria are addressed in the Findings for Approval (Exhibit A of Attachment 1). The application is a legislative action and is not subject to the 120-day clock.

COMMENTS

Notice of the proposed changes was given to the following agencies and persons: Milwaukie's Neighborhood District Associations, Metro, the Department of Land Conservation and

Development, and the following City of Milwaukie departments: Engineering, Finance, and Police. Notice was also posted at City Hall, Ledding Library, Public Safety Building, and the Johnson Creek Facility. In addition, notice was mailed to the owners and businesses within the City's industrial zone districts.

CONCURRENCE

The Planning Commission held a public hearing on this application on March 24, 2016 and voted 6-1 to recommend that the Council approve the proposal.

Casey Camors of the Finance Department and Shelby Rihala of Jordan Ramis have reviewed the draft ordinances and have not identified conflicts or issues.

FISCAL AND WORK LOAD IMPACTS

No major fiscal or work load impacts are anticipated from the proposed code changes.

In a separate report, the finance department is proposing that the City initiate the process of imposing a local 3% local tax on the sale of recreational marijuana. The action requires placing a measure on the November ballot.

ALTERNATIVES

- A. Approve the proposed amendments.
- B. Approve the proposed amendments with modifications to the materials in Attachment 1.
- C. Do not approve the proposed amendments.
- D. Continue the hearing.

ATTACHMENTS

- 1. Ordinance
 - Exhibit A: Recommended Findings in Support of Approval
 - Exhibit B: Proposed Zoning Ordinance Amendments (Underline/Strikeout)
 - Exhibit C: Proposed Zoning Ordinance Amendments (Clean)



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No.

An ordinance of the City Council of the City of Milwaukie, Oregon to amend Title 19 Zoning to regulate marijuana businesses. (File #ZA-2016-001).

WHEREAS, during the 2015 legislative session, the Oregon State Legislature passed a series of bills addressing marijuana businesses, including House Bill 3400, which expands upon the framework of Measure 91 (the voter-approved act legalizing recreational marijuana);

WHEREAS, the Oregon State Legislature has charged the Oregon Liquor Control Commission with regulating the recreational marijuana industry in Oregon and the OLCC is currently in the process of issuing licenses for marijuana businesses;

WHEREAS, the City of Milwaukie adopted regulations for medical marijuana dispensaries on April 7, 2015 but is in need of additional regulations to address recreational marijuana businesses and businesses supplying medical marijuana to dispensaries;

WHEREAS, on January 5, 2016 and January 19, 2016, the City Council discussed code concepts and provided general direction for development of a set of regulations for marijuana businesses;

WHEREAS, on January 26, 2016, the Planning Commission held a work session regarding code concepts and on April 26, 2016, the Planning Commission reviewed an initial set of draft zoning text amendments and provided suggested refinements;

WHEREAS, the Planning Commission held a duly-advertised public hearing on the zoning text amendments on May 24, 2016, with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes, and recommended approval; and

WHEREAS, the City Council held a duly-advertised public hearing with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Findings. Findings of fact in support of the proposed amendments to Title 19 are attached as Exhibit A.

Section 2. Amendments. Title 19 Zoning is amended as described in Exhibit B (underline/strikeout version) and Exhibit C (clean version).

Read the first time on _____, and moved to second reading by _____ vote

of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

**Findings in Support of Approval
File ZA-2016-001, Zone Text Amendments to Regulate Marijuana Businesses**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision regarding this application.

1. The applicant, the Milwaukie Planning Director, has applied for a zoning ordinance text amendment (File ZA-2016-001) to regulate marijuana businesses in the following zones:
 - Low Density Residential Zones: R-10, R-7, and R-5
 - Medium and High Density Residential Zones: R-3, R-2.5, R-2, R-1, and R-1-B
 - Limited and General Commercial Zones: C-L and C-G
 - Community Shopping Commercial Zone: C-CS
 - Mixed Use Zones: GMU, NMU, and DMU
 - Manufacturing Zone: M
 - Tacoma Station Area Manufacturing Zone: M-TSA
 - Business Industrial Zone: B-I
2. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Section 19.1000 Review Procedures
3. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. A public hearing before the Planning Commission was held on May 24, 2016 as required by law.
4. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendment is proposed by the City of Milwaukie and was initiated by the City Planning Director on April 19, 2016.
 - b. MMC Section 19.1008 establishes requirements for Type V review.
 - (1) MMC Subsection 19.1008.3.A.1 requires opportunity for public comment and review. Opportunity for public comment and review has been provided. Public notice in the form of email to the Neighborhood District Associations, posted notices, and information on the City website have publicized the Planning Commission's hearing on the proposed amendment to encourage comment by any interested party. In addition, an article was placed in the Pilot providing notice of the hearing.
 - (2) MMC Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public. A notice of the Planning Commission's May 24, 2016, hearing was posted at City Hall, the Ledding Library, the Public Service Building, and the City's Johnson Creek Building Offices.
 - (3) MMC Subsection 19.1008.3.A.2 requires notice be sent to individual property owners if the proposal affects a discrete geographic area. The Planning Director has determined that the proposal affects a large geographic area. Notice to

individual property owners was provided only to owners and businesses in the City's industrial zones. Notice to residential, commercial, and mixed-use property owners was not provided.

- (4) MMC Subsection 19.1008.3.B and C require notice of a Type V application to be sent to Metro and to the Department of Land Conservation and Development prior to the first evidentiary hearing. This notice was sent April 19, 2016.
 - (5) MMC Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the application would affect the permissible uses of land for those property owners. Given that the proposal will expand the range of uses permitted within each of the zones rather than place limits on existing permitted uses, no Measure 56 notices were sent.
 - (6) MMC Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application. The Planning Commission held a public hearing on May 24, 2016, and passed a motion recommending that the City Council approve the zoning ordinance text amendment. The City Council held a public hearing on July 19, 2016, and approved the text amendment.
5. MMC Section 19.902 Amendments to Maps and Ordinances
- a. MMC 19.902.5.A establishes the review process for zoning text amendments.
The code states that changes to Title 19 shall be subject to Type V review per MMC 19.1008.
 - b. MMC 19.902.5.B establishes five criteria (listed below) for approval of changes to the zoning ordinance text. The City Council finds that the approval criteria have been met for the reasons listed below each of the criterion.
 - (1) The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.
The proposed code amendments allow recreational marijuana stores to locate under the same standards that currently apply to medical marijuana dispensaries. The amendments allow marijuana warehousing and processing uses to locate in industrial areas and be subject to the same standards as other similar industrial uses except that these marijuana-related businesses must also meet additional security and odor control standards. The amendments allow marijuana testing and research facilities in commercial and industrial zones that currently allow offices uses. The testing and research uses will be required to provide a higher level of security and odor control than other general use offices. The amendments allow medical grow sites indoors in residential areas provided security and odor control standards are met. The amendments allow medical and recreational grow sites in the M-Manufacturing zone along Johnson Creek Blvd and by conditional use in the B-I zone and in the North Milwaukie Industrial Area (NMIA). These uses will be subject to specific security and odor control standards to manage impacts.
No conflicts with other City code provisions are anticipated. All other code provisions can operate and be enforced with these amendments.
 - (2) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.

Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

Relevant goals, objectives, and policies include:

- The Goal Statement of the Economic Base and Industrial/Commercial Land Use Element reads as follows:

To continue to support and encourage the development of a broad industrial base in the City, and to encourage the expansion of service facilities in the community.

- Objective #2 - Employment Opportunity states:

To continue to support a wide range of employment opportunities for Milwaukie citizens.

- Policy 4 of Objective #2 - Employment Opportunity states:

The City will support home occupations (income-producing activities in the home) as long as these activities do not detract from the residential character of the area.

- Objective #4 – Industrial Land Use states:

To encourage new industries to locate within the three major industrial areas of the City, in order to take maximum advantage of existing access and public facilities serving industry.

- Policy 3 of Objective #4 – Industrial Land Use states:

Lands designated for industrial use as shown on Map 7, Land Use, should be reserved for industrial, manufacturing, distribution, and supporting land uses, except where otherwise indicated in the Tacoma Station Area Plan.

- Objective #5 – Industrial Impacts states:

To minimize the adverse impacts of industrial and employment center development and operation on surrounding areas.

- Objective #6 – Commercial Land Use states:

To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.

- Objective #8 – Commercial Land Use – Community Center states:

To provide the weekly and comparison goods shopping needs of the City's and surrounding areas' residents.

- Policy 4 under Objective #8 Commercial Land Use – Community Center reads:

The Center will increase comparative and one-stop shopping services, thereby reducing vehicle trips outside the City, and providing better shopping services to the area.

- Objective #10 – Commercial Land Use – Convenience Centers states:

To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility to residents.

- Policy 3 under Objective #10 Commercial Land Use – Convenience Centers reads:

Local convenience centers will be designed to minimize the impacts on adjacent properties through visual screening, lighting controls, etc.

- Policy 1 under Objective #12 Town Center reads:

Downtown Milwaukie, and specifically those lands designated as Town Center on Map 7, will be considered a Town Center, serving area-wide needs as well as the needs of local residents.

The relevant goals, objectives, and policies are satisfied for the following reasons:

There are no specific Comprehensive Plan policies or objectives that provide clear guidance regarding whether the list of permitted uses for a given zone should be expanded to include a use that is not listed elsewhere in the code. Rather, the policies and objectives speak generally about broad objectives for economic development and the protection of zone districts for their intended uses.

The proposed text amendments provides a community benefit by allowing marijuana businesses to locate in commercial and industrial zones within the City, thereby increasing economic activity and enhancing convenience and accessibility for Milwaukie residents. For this reason, the following goals, policies, and objectives are satisfied by the proposal:

- Goal Statement of the Economic Base and Industrial/Commercial Land Use Element
- Objective #2 – Employment Opportunity
- Objective #4 – Industrial Land Use
- Objective #6 – Commercial Land Use
- Objective #8 – Commercial Land Use – Community Center
- Policy 4 of Objective #8 Commercial Land Use – Community Center
- Objective #10 – Commercial Land Use – Convenience Centers
- Policy 1 of Objective #12 Town Center

Policy 4 of Objective#2 – The amendments allow medical grow operations as home occupations within residential districts. The proposal limits impacts by requiring that grow operations be indoors and utilize odor control equipment.

Policy 3 of Objective #4 – Industrial Land Use appears to present a conflict with the proposal that marijuana retail facilities be allowed in the M-Zone given that the policy states “industrial lands should be reserved for industrial purposes.” The M-zone currently allows a wide range of retail uses provided that at least 25% of the development site is developed for manufacturing or industrial purposes. Because a portion of any development site is reserved for manufacturing or industrial use and because similar non-industrial (office and limited retail) uses are currently allowed in the zone, the proposed amendment does not conflict with Policy 3.

Policy 3 under Objective #10 Commercial Land Use – Convenience Centers addresses neighborhood compatibility. The proposed amendments manage

impacts on neighborhoods by limiting the hours of operation and by regulating the display of products for retail marijuana sales.

Objective #5 – Industrial Impacts – The amendments satisfy the objective through the incorporation of new development standards that require processing, production, warehousing, research and testing facilities to utilize odor control equipment.

In conclusion, all relevant goals, objectives and policies are satisfied by the proposed amendments for the reasons stated above.

- (3) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (4) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reason. The proposed text amendment does not impact the transportation system given that it does not create the opportunity for any more vehicle trips than are currently allowed by other similar uses in each respective zone: i.e., retail stores and offices in commercial zones and warehousing, processing, offices, and production facilities in industrial zones.

- (5) The proposed amendment is consistent with relevant federal regulations.

Relevant federal regulations are those that address land use, the environment, or development in the context of local government planning. Typically, regulations such as those set forth under the following acts may be relevant to a local government land use process: the Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fair Housing Act, the National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act, and the Resource Conservation and Recovery Act. None of these acts include regulations that impact the subject proposal or that cannot be met through normal permitting procedures. Therefore the proposal is found to be consistent with federal regulations that are relevant to local government planning.

Underline/Strikeout Amendments

Zoning Ordinance

CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

“Agriculture” means the tilling of the soil, the raising of crops, dairying, or animal husbandry; but not including the keeping or raising of fowl, pigs, or furbearing animals unless the keeping of animals is clearly incidental to the principal use of the property for the raising of crops.

“Production-related office” means offices that are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, research, production, processing, packaging, or assembly of goods and products. Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers; and medical and dental labs.

“Medical marijuana facility” means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475B and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are instead classified as "marijuana production" for purposes of this Code not permitted under the City of Milwaukie's medical marijuana facility regulations.

"Marijuana business" means a state-licensed business involved in the production, processing, warehousing, testing, research, or sale of marijuana or marijuana-derived products.

"Marijuana processor" means a state-licensed business that processes, compounds, transforms, or converts marijuana into other marijuana products including concentrates, extracts, or edible products.

"Marijuana production" means planting, cultivating, growing, or harvesting of marijuana for sale or processing as a legal, state-licensed business.

"Marijuana retailer" means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.

CHAPTER 19.300 BASE ZONES

19.301 LOW DENSITY RESIDENTIAL ZONES

19.301.3 Use Limitations and Restrictions

A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.

- A1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.

Proposed Code Amendment

- B2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than one acre, nor having less than 10,000 sq ft per head of livestock.
- C3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.

B. Marijuana production is not permitted in low density residential zones except as follows:

- 1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards set forth in Subsection 19.509.2.
- 2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

19.302 MEDIUM AND HIGH DENSITY RESIDENTIAL ZONES

19.302.3 Use Limitations and Restrictions

- A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.
 - 1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.
 - 2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock.
 - 3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.
- B. Office uses allowed in the medium and high density zones are offices, studios, clinics, and others similar professional offices. Corporate offices for marijuana businesses are permitted provided that no marijuana or marijuana products associated with the business are onsite.
- C. Marijuana production is not permitted in medium and high density residential zones except as follows:
 - 1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards set for in Subsection 19.509.2.
 - 2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

19.303 COMMERCIAL MIXED-USE ZONES

19.303.2 Uses

Table 19.303.2 Uses Allowed in Commercial Mixed-Use Zones			
Uses and Use Categories	GMU	NMU	Standards/Additional Provisions
Commercial^{3, 4}			
<p>General Office</p> <p>General office means professional, executive, management, or administrative or administrative offices of firms or organizations.</p> <p>Examples include professional services such as lawyers, architects, or accountants; financial businesses such as lenders, credit unions, or real estate agents; sales offices; <u>offices for testing and research-related businesses</u>, and medical and dental clinics<u>clinics</u>.</p>	P	P	<u>Subsection 19.509.2 Security and Odor Control for Certain Marijuana Businesses</u>
<p>Retail-oriented sales</p> <p>Sales-oriented retail firms are involved in the sale, leasing, and rental of new or used products to the general public. Examples include stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronics, fabric, gifts, groceries, hardware, household products, jewelry, pets and pet products, pharmaceuticals, plants, printed materials, stationery, and printed and electronic media.</p>	P	P	
<p>Marijuana retailer <u>Medical marijuana facility</u></p> <p>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</p> <p>Medical marijuana facility means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475 and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are not permitted under the City of Milwaukie's medical marijuana facility regulations.</p>	P	P	<u>Subsection 19.303.6 Standards for Medical Marijuana Facilities</u> <u>Subsection 19.509.1 Marijuana Retailers</u>

Proposed Code Amendment

Manufacturing and Production			
<p>Manufacturing and production.⁸ Manufacturing and production uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; <u>marijuana processors</u>; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; and production of artwork and toys. <u>Marijuana production is prohibited.</u></p>	<p>P</p>	<p>P</p>	<p><u>Subsection 19.509.2 Security and Odor Control for Certain Marijuana Businesses</u></p>

P = Permitted.

3. In the NMU Zone, unless otherwise specified in this section, all nonresidential uses listed in Table 19.303.2 shall be no greater than 10,000 sq ft in area per use. A nonresidential use greater than 10,000 sq ft in area may be approved through a conditional use review pursuant to Section 19.905.
4. The 10,000 sq ft size limitation in Footnote 3 of Table 19.303.2 does not apply to "retail-oriented sales" uses established within the existing lot and building situated at 4320 SE King Rd, within the lot's boundaries that exist on February 13, 2016, the effective date of Ordinance #2112. Redevelopment of the site is subject to all standards of Table 19.303.2.
8. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on the site would not be considered manufacturing or production.

19.303.6 Standards for Medical Marijuana Facilities

In the commercial mixed-use zones, medical marijuana facilities shall meet the following standards:

- A. ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
- B. ~~A medical marijuana facility shall not be colocated with another business.~~
- C. ~~Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
- D. ~~The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

19.303.76 Additional Provisions

Depending on the type and use of development proposed, the following sections of the Milwaukie Municipal Code may apply. These sections are references for convenience, and do not limit or determine the applicability of other sections within the Milwaukie Municipal Code.

19.304 DOWNTOWN ZONES

19.304.2 Uses

Table 19.304.2 Downtown Zones—Uses			
Uses and Use Categories	DMU	OS	Standards/ Additional Provisions
Commercial			
<p>Production-related office</p> <p>Production-related office uses are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, <u>research, production, processing, packaging, or assembly of goods and products.</u></p> <p>Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers, and medical and dental labs.</p>	P/CU	N	<p>Subsection 19.304.3.A.2 Main St limitations</p> <p>Subsection 19.304.3.A.3 Commercial use limitations</p> <p>Subsection 19.509.2 <u>Security and Odor Control for Certain Marijuana Business</u></p> <p>Section 19.905 Conditional Uses</p> <p><u>Note: Production, processing, packaging, and assembly uses must meet the standards listed below under Manufacturing.</u></p>
<p><u>Marijuana retailer</u></p> <p><u>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</u></p> <p>Medical marijuana facility</p> <p>Medical marijuana facility means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475 and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are not permitted under the City of Milwaukie's medical marijuana facility regulations.</p>	P/CU	N	<p>Subsection 19.509.1 19.304.3.A.7 <u>Marijuana Retailers Medical Marijuana Facilities</u></p>

Proposed Code Amendment

Manufacturing			
<p>Manufacturing and production</p> <p>Uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; <u>marijuana processors</u>; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments (including musical instruments), vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p>	P	N	<p>Subsection 19.304.3.A.87 Manufacturing and production limitations</p> <p>Subsection 19.509.2 <u>Security and Odor Control for Certain Marijuana Businesses</u></p>

P = Permitted.

N = Not permitted.

CSU = Permitted with community service use approval subject to provisions of Section 19.904. Type III review required to establish a new CSU or for major modification of an existing CSU. Type I review required for a minor modification of an existing CSU.

CU = Permitted with conditional use approval subject to the provisions of Section 19.905. Type III review required to establish a new CU or for major modification of an existing CU. Type I review required for a minor modification of an existing CU.

19.304.3 Use Limitations, Restrictions, and Provisions

A. Use Limitations and Restrictions

The following provisions describe the limitations for uses listed in Table 19.304.2.

~~7. Medical marijuana facilities shall meet the following standards:~~

~~a. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 ft of another medical marijuana facility.~~

~~b. A medical marijuana facility shall not be colocated with another business.~~

~~c. Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.~~

~~d. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

87. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a

restaurant kitchen that prepares food that is purchased on-site would not be considered manufacturing or production. Marijuana production is prohibited.

19.306 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- B. ~~Offices of~~ for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- F. Marijuana retailers ~~Medical marijuana facilities~~ subject to the standards of Subsection 19.306.3.L509.1.

19.306.2 Conditional Uses Permitted

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- H. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

19.306.3 Standards

In a C-L Zone the following standards shall apply:

- L. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2. ~~Medical marijuana facilities shall meet the following standards:~~
 - 1. ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
 - 2. ~~A medical marijuana facility shall not be colocated with another business.~~
 - 3. ~~Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
 - 4. ~~The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

19.307 GENERAL COMMERCIAL ZONE C-G

In a C-G Zone the following regulations shall apply:

19.307.1 Uses Permitted Outright

In a C-G Zone the following uses and their accessory uses are permitted outright:

- B. ~~Offices of~~ for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory;
- Y. Marijuana retailer ~~Medical marijuana facilities~~ subject to the standards of Subsection ~~19.307.3.M509.1;~~ 19.307.3.M509.1;

19.307.2 Conditional Uses Permitted

In a C-G Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- E. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

19.307.3 Standards

In a C-G Zone the following standards shall apply:

- M. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2. ~~Medical marijuana facilities shall meet the following standards:~~
 - 1. ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
 - 2. ~~A medical marijuana facility shall not be colocated with another business.~~
 - 3. ~~Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.~~
 - 4. ~~The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

19.308 COMMUNITY SHOPPING COMMERCIAL ZONE C-CS

In a C-CS Zone the following regulations shall apply:

19.308.1 Uses

Development shall be a community-scale shopping center.

- A. Such center shall include at least 3 out of the 4 following uses:
 - 1. Department store uses;
 - 2. Drug and/or variety store uses;

3. Food supermarket;
 4. Retail specialty shops.
- B. Such center may include the following additional uses:
7. Marijuana retailer ~~Medical marijuana facilities~~ subject to the standards of Subsection 19.308.5.K 509.1;

19.308.5 Development Standards

- K. ~~Medical marijuana facilities shall meet the following standards:~~
1. ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
 2. ~~A medical marijuana facility shall not be colocated with another business.~~
 3. ~~Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
 4. ~~The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

19.309 MANUFACTURING ZONE M

19.309.2 Permitted Uses

Permitted uses are limited to industrial uses meeting the following criteria:

- A. Any combination of manufacturing, office, and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 19.309.2.B.
- B. A use which involves the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources, and/or the assembly of goods from products which have been processed elsewhere, general manufacturing, and production.
- C. Commercial and office uses which are accessory to the industrial use(s). Such uses may include gymnasium, health club, secretarial services, sandwich deli, small restaurant, and retail/wholesale commercial use and showroom.
- D. May produce small amounts of noise, dust, vibration, or glare, but may not produce off-site impacts that create a nuisance, as defined by DEQ or the City Noise Ordinance.
- E. A permitted use may require outside storage areas. These storage areas shall be screened with a sight-obscuring fence or dense plantings from any adjoining residential uses or public streets.
- F. Warehouse use which is accessory to an industrial use.
- G. Marijuana retailers ~~Medical marijuana facilities~~ are allowed as a commercial use under Subsection 19.309.2.A. and subject to the special development standards set forth in Subsection 19.309.7.A 509.1.

19.309.7 Special Development Standards

The following development standards apply to specified uses in the M Zone.

A. Marijuana Businesses ~~Medical Marijuana Facilities~~

1. Marijuana retailers shall be subject to the standards of Subsection 19.509.1 ~~Medical marijuana facilities shall meet the following standards:~~
2. Marijuana production, processing, testing, research, and warehousing shall be subject to the security and odor control standards of Subsection 19.509.2.
- 1 ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
- 2 ~~A medical marijuana facility shall not be colocated with another business.~~
- 3 ~~Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
- 4 ~~The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

19.310 BUSINESS INDUSTRIAL ZONE BI

19.310.2 Uses Permitted Outright

- A. The following business and industrial uses are allowed outright, subject to the standards of Subsection 19.310.6.
1. Experimental, research, film, or testing laboratories, provided no operation shall be conducted or equipment used which would create hazards and/or nuisances off the site (marijuana testing or research shall also be subject to the security and odor control standards of Subsection 19.509.2);
 2. Manufacturing, processing, fabrication, packaging, or assembly of products from previously prepared materials;
- C. Warehousing and distribution (marijuana warehousing shall be subject to the security and odor control standards of Subsection 19.509.2).

19.310.5 Conditional Uses

B. Uses allowed subject to the above conditions are:

4. Marijuana producers and processors. Marijuana producers and processors shall be subject to the security and odor control standards of Subsection 19.509.2.
-

19.312 TACOMA STATION AREA MANUFACTURING ZONE M-TSA

19.312.2 Use Categories

The categories of land uses that are permitted in the M-TSA Zone are listed in Table 19.312.2. Permitted uses are designated with a “P.” A “C” in this table indicates a use that may be authorized as a conditional use in conformance with Chapter 19.905. An “L” indicates a use that is permitted outright with certain limitations as described in Subsection 19.312.6. Uses not listed in the table are not allowed.

All uses must comply with the land use district standards of this section and all other applicable requirements of the Zoning Ordinance. If it is unclear whether a proposed use is allowed under the use categories, the applicant may submit a Director Determination application per Subsection 19.903 to resolve the issue.

Table 19.312.2 M-TSA Zone Uses	
Use Category	Status
G. Limited Uses	
This category comprises uses that are primarily intended to support and serve other allowed uses in the M-TSA Zone. Limited uses are divided into two subcategories. See Subsection 19.312.6 for applicable limitations on these uses.	L
3. Medical Marijuana Facilities — This subcategory applies only to retail sales of medical marijuana at State-licensed facilities	
L. Marijuana Businesses (as Limited Uses)	
This category includes the following businesses:	L
1. <u>Marijuana retailers subject to the standards of Subsections 19.312.6 B. and 19.509.1</u>	
2. <u>Marijuana processing, testing, research, and warehousing subject to the standards of Subsection 19.509.2.</u>	
3. <u>Marijuana production subject to the conditional use process and the standards of Subsection 19.509.2.</u>	C ¹

P = Permitted.

L = Limited.

C = Conditional use.

¹ Only marijuana production is subject to the condition use process.

19.312.5 Standards for Conditional Uses

The following standards apply to those uses listed as conditional (C) in Table 19.312.2.

C. Marijuana Production

1. Marijuana production shall be subject to the security and odor control standards of Subsection 19.509.2.

19.312.6 Standards for Limited Uses

The following standards apply to those uses listed as limited (L) in Table 19.312.2.

~~**B. Medical Marijuana Facilities**~~

~~Medical marijuana facilities shall meet the following standards:~~

- ~~1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
- ~~2. A medical marijuana facility shall not be colocated with another business.~~
- ~~3. Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
- ~~4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

C.B. Retail Commercial and Professional Services

In order to ensure that these uses are limited in size and scale and do not dominate land intended for manufacturing uses, the following standards apply. See Figure 19.312.6.B for an illustration of the size limitations.

Figure 19.312.6.CB

Size Limitations for Retail and Professional Service Uses



CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.507 HOME OCCUPATION STANDARDS

19.507.2 Prohibitions and Use Restrictions

F. Except as set forth below, all marijuana-related businesses (production, processing, testing, warehousing, and sales) are prohibited as home occupations. State-licensed production for

medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards of Subsection 19.509.2.

19.509 MARIJUANA BUSINESS STANDARDS

The intent of these regulations is to ensure that potential impacts from marijuana businesses are managed and mitigated.

19.509.1 Marijuana Retailers

- A. A marijuana retailer shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors. In addition, a marijuana retailer shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites nor within 1,000 ft of another marijuana retailer.
- B. A marijuana retailer shall not be collocated with another business except when collocated with another state-licensed marijuana business as permitted by state laws.
- C. Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.
- D. The hours of operation for marijuana retailer shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
- E. No drive-through sales are permitted.

19.509.2 Security and Odor Control for Certain Marijuana Businesses

- A. The operation shall be entirely indoors, within a fully-enclosed, secure building meeting building codes adopted by the City of Milwaukie and all other applicable state regulations.
- B. Odor shall be managed through the installation of activated carbon filters on exhaust outlets to the building exterior from any rooms used for production, processing, testing, research, and warehousing. Negative air pressure shall be maintained within the rooms. Exhaust outlets shall be a minimum of 25 ft from a property line.
- C. An alternative odor control system may be approved by the building official based on a report by a mechanical engineer licensed by the state of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.

Clean Amendments

Zoning Ordinance

CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

"Agriculture" means the tilling of the soil, the raising of crops, dairying, or animal husbandry; but not including the keeping or raising of fowl, pigs, or furbearing animals unless the keeping of animals is clearly incidental to the principal use of the property for the raising of crops.

"Production-related office" means offices that are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, research, production, processing, packaging, or assembly of goods and products. Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers; and medical and dental labs.

"Medical marijuana facility" means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475B and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are instead classified as "marijuana production" for purposes of this Code.

"Marijuana business" means a state-licensed business involved in the production, processing, warehousing, testing, research, or sale of marijuana or marijuana-derived products.

"Marijuana processor" means a state-licensed business that processes, compounds, transforms, or converts marijuana into other marijuana products including concentrates, extracts, or edible products.

"Marijuana production" means planting, cultivating, growing, or harvesting of marijuana for sale or processing as a legal, state-licensed business.

"Marijuana retailer" means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.

CHAPTER 19.300 BASE ZONES

19.301 LOW DENSITY RESIDENTIAL ZONES

19.301.3 Use Limitations and Restrictions

- A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.
1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.

Proposed Code Amendment

2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than one acre, nor having less than 10,000 sq ft per head of livestock.
 3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.
- B. Marijuana production is not permitted in low density residential zones except as follows:
1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards set forth in Subsection 19.509.2.
 2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

19.302 MEDIUM AND HIGH DENSITY RESIDENTIAL ZONES

19.302.3 Use Limitations and Restrictions

- A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.
1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.
 2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock.
 3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.
- B. Office uses allowed in the medium and high density zones are offices, studios, clinics, and other similar professional offices. Corporate offices for marijuana businesses are permitted provided that no marijuana or marijuana products associated with the business are onsite.
- C. Marijuana production is not permitted in medium and high density residential zones except as follows:
1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards set for in Subsection 19.509.2.
 2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

19.303 COMMERCIAL MIXED-USE ZONES

19.303.2 Uses

Table 19.303.2 Uses Allowed in Commercial Mixed-Use Zones			
Uses and Use Categories	GMU	NMU	Standards/Additional Provisions
Commercial^{3, 4}			
<p>General Office</p> <p>General office means professional, executive, management, or administrative or administrative offices of firms or organizations.</p> <p>Examples include professional services such as lawyers, architects, or accountants; financial businesses such as lenders, credit unions, or real estate agents; sales offices; offices for testing and research-related businesses, and medical and dental clinics.</p>	P	P	<p>Subsection 19.509.2 Security and Odor Control for Certain Marijuana Businesses</p>
<p>Retail-oriented sales</p> <p>Sales-oriented retail firms are involved in the sale, leasing, and rental of new or used products to the general public. Examples include stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronics, fabric, gifts, groceries, hardware, household products, jewelry, pets and pet products, pharmaceuticals, plants, printed materials, stationery, and printed and electronic media.</p>	P	P	
<p>Marijuana retailer</p> <p>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</p>	P	P	<p>Subsection 19.509.1 Marijuana Retailers</p>

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Manufacturing and Production			
<p>Manufacturing and production.⁸</p> <p>Manufacturing and production uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; marijuana processors; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p> <p>Marijuana production is prohibited.</p>	P	P	Subsection 19.509.2 Security and Odor Control for Certain Marijuana Businesses

P = Permitted.

- In the NMU Zone, unless otherwise specified in this section, all nonresidential uses listed in Table 19.303.2 shall be no greater than 10,000 sq ft in area per use. A nonresidential use greater than 10,000 sq ft in area may be approved through a conditional use review pursuant to Section 19.905.
- The 10,000 sq ft size limitation in Footnote 3 of Table 19.303.2 does not apply to "retail-oriented sales" uses established within the existing lot and building situated at 4320 SE King Rd, within the lot's boundaries that exist on February 13, 2016, the effective date of Ordinance #2112. Redevelopment of the site is subject to all standards of Table 19.303.2.
- Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on the site would not be considered manufacturing or production.

19.303.6 Additional Provisions

Depending on the type and use of development proposed, the following sections of the Milwaukie Municipal Code may apply. These sections are references for convenience, and do not limit or determine the applicability of other sections within the Milwaukie Municipal Code.

19.304 DOWNTOWN ZONES

19.304.2 Uses

Table 19.304.2 Downtown Zones—Uses			
Uses and Use Categories	DMU	OS	Standards/ Additional Provisions
Commercial			
Production-related office	P/CU	N	Subsection 19.304.3.A.2

<p>Production-related office uses are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, research, production, processing, packaging, or assembly of goods and products.</p> <p>Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers, and medical and dental labs.</p>			<p>Main St limitations Subsection 19.304.3.A.3 Commercial use limitations Subsection 19.509.2 Security and Odor Control for Certain Marijuana Business Section 19.905 Conditional Uses Note: Production, processing, packaging, and assembly uses must meet the standards listed below under Manufacturing.</p>
<p>Marijuana retailer</p> <p>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</p>	<p>P/CU</p>	<p>N</p>	<p>Subsection 19.509.1 Marijuana Retailers</p>
<p>Manufacturing</p>			
<p>Manufacturing and production</p> <p>Uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; marijuana processors; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments (including musical instruments), vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p>	<p>P</p>	<p>N</p>	<p>Subsection 19.304.3.A.7 Manufacturing and production limitations Subsection 19.509.2 Security and Odor Control for Certain Marijuana Businesses</p>

P = Permitted.

N = Not permitted.

CSU = Permitted with community service use approval subject to provisions of Section 19.904. Type III review required to establish a new CSU or for major modification of an existing CSU. Type I review required for a minor modification of an existing CSU.

CU = Permitted with conditional use approval subject to the provisions of Section 19.905. Type III review required to establish a new CU or for major modification of an existing CU. Type I review required for a minor modification of an existing CU.

19.304.3 Use Limitations, Restrictions, and Provisions

A. Use Limitations and Restrictions

The following provisions describe the limitations for uses listed in Table 19.304.2.

7. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on-site would not be considered manufacturing or production. Marijuana production is prohibited.

19.306 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- B. Offices for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- F. Marijuana retailers subject to the standards of Subsection 19.509.1.

19.306.2 Conditional Uses Permitted

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- H. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

19.306.3 Standards

In a C-L Zone the following standards shall apply:

- L. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2.

19.307 GENERAL COMMERCIAL ZONE C-G

In a C-G Zone the following regulations shall apply:

19.307.1 Uses Permitted Outright

In a C-G Zone the following uses and their accessory uses are permitted outright:

- B. Offices for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory;
- Y. Marijuana retailer subject to the standards of Subsection 19.509.1;

19.307.2 Conditional Uses Permitted

In a C-G Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- E. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

19.307.3 Standards

In a C-G Zone the following standards shall apply:

- M. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2.

19.308 COMMUNITY SHOPPING COMMERCIAL ZONE C-CS

In a C-CS Zone the following regulations shall apply:

19.308.1 Uses

Development shall be a community-scale shopping center.

- A. Such center shall include at least 3 out of the 4 following uses:
 - 1. Department store uses;
 - 2. Drug and/or variety store uses;
 - 3. Food supermarket;
 - 4. Retail specialty shops.
- B. Such center may include the following additional uses:
 - 7. Marijuana retailer subject to the standards of Subsection 19. 509.1;

19.309 MANUFACTURING ZONE M

19.309.2 Permitted Uses

Permitted uses are limited to industrial uses meeting the following criteria:

- A. Any combination of manufacturing, office, and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 19.309.2.B.

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- B. A use which involves the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources, and/or the assembly of goods from products which have been processed elsewhere, general manufacturing, and production.
- C. Commercial and office uses which are accessory to the industrial use(s). Such uses may include gymnasium, health club, secretarial services, sandwich deli, small restaurant, and retail/wholesale commercial use and showroom.
- D. May produce small amounts of noise, dust, vibration, or glare, but may not produce off-site impacts that create a nuisance, as defined by DEQ or the City Noise Ordinance.
- E. A permitted use may require outside storage areas. These storage areas shall be screened with a sight-obscuring fence or dense plantings from any adjoining residential uses or public streets.
- F. Warehouse use which is accessory to an industrial use.
- G. Marijuana retailers are allowed as a commercial use under Subsection 19.309.2.A. and subject to the special development standards set forth in Subsection 19.509.1.

19.309.7 Special Development Standards

The following development standards apply to specified uses in the M Zone.

- A. Marijuana Businesses
 - 1. Marijuana retailers shall be subject to the standards of Subsection 19.509.1
 - 2. Marijuana production, processing, testing, research, and warehousing shall be subject to the security and odor control standards of Subsection 19.509.2.

19.310 BUSINESS INDUSTRIAL ZONE BI

19.310.2 Uses Permitted Outright

- A. The following business and industrial uses are allowed outright, subject to the standards of Subsection 19.310.6.
 - 1. Experimental, research, film, or testing laboratories, provided no operation shall be conducted or equipment used which would create hazards and/or nuisances off the site (marijuana testing or research shall also be subject to the security and odor control standards of Subsection 19.509.2);
 - 2. Manufacturing, processing, fabrication, packaging, or assembly of products from previously prepared materials;
- C. Warehousing and distribution (marijuana warehousing shall be subject to the security and odor control standards of Subsection 19.509.2).

19.310.5 Conditional Uses

- B. Uses allowed subject to the above conditions are:
 - 4. Marijuana producers and processors. Marijuana producers and processors shall be subject to the security and odor control standards of Subsection 19.509.2.

19.312 TACOMA STATION AREA MANUFACTURING ZONE M-TSA

19.312.2 Use Categories

The categories of land uses that are permitted in the M-TSA Zone are listed in Table 19.312.2. Permitted uses are designated with a “P.” A “C” in this table indicates a use that may be authorized as a conditional use in conformance with Chapter 19.905. An “L” indicates a use that is permitted outright with certain limitations as described in Subsection 19.312.6. Uses not listed in the table are not allowed.

All uses must comply with the land use district standards of this section and all other applicable requirements of the Zoning Ordinance. If it is unclear whether a proposed use is allowed under the use categories, the applicant may submit a Director Determination application per Subsection 19.903 to resolve the issue.

Table 19.312.2 M-TSA Zone Uses	
Use Category	Status
G. Limited Uses	
This category comprises uses that are primarily intended to support and serve other allowed uses in the M-TSA Zone. Limited uses are divided into two subcategories. See Subsection 19.312.6 for applicable limitations on these uses.	L
L. Marijuana Businesses (as Limited Uses)	
This category includes the following businesses: 1. Marijuana retailers subject to the standards of Subsections 19.312.6 B. and 19.509.1 2. Marijuana processing, testing, research, and warehousing subject to the standards of Subsection 19.509.2. 3. Marijuana production subject to the conditional use process and the standards of Subsection 19.509.2.	L C ¹

P = Permitted.

L = Limited.

C = Conditional use.

¹ Only marijuana production is subject to the condition use process.

19.312.5 Standards for Conditional Uses

The following standards apply to those uses listed as conditional (C) in Table 19.312.2.

C. Marijuana Production

- Marijuana production shall be subject to the security and odor control standards of Subsection 19.509.2.

19.312.6 Standards for Limited Uses

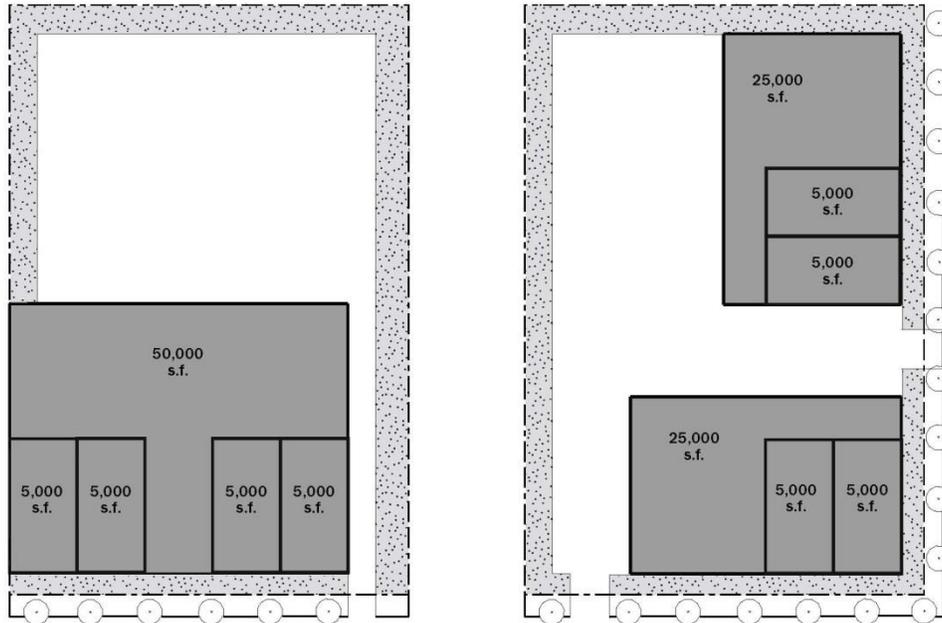
The following standards apply to those uses listed as limited (L) in Table 19.312.2.

B. Retail Commercial and Professional Services

In order to ensure that these uses are limited in size and scale and do not dominate land intended for manufacturing uses, the following standards apply. See Figure 19.312.6.B for an illustration of the size limitations.

Figure 19.312.6.B

Size Limitations for Retail and Professional Service Uses



CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.507 HOME OCCUPATION STANDARDS

19.507.2 Prohibitions and Use Restrictions

- F. Except as set forth below, all marijuana-related businesses (production, processing, testing, warehousing, and sales) are prohibited as home occupations. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards of Subsection 19.509.2.

19.509 MARIJUANA BUSINESS STANDARDS

The intent of these regulations is to ensure that potential impacts from marijuana businesses are managed and mitigated.

19.509.1 Marijuana Retailers

- A. A marijuana retailer shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors. In addition, a marijuana retailer shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites nor within 1,000 ft of another marijuana retailer.
- B. A marijuana retailer shall not be collocated with another business except when collocated with another state-licensed marijuana business as permitted by state laws.

- C. Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.
- D. The hours of operation for marijuana retailer shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
- E. No drive-through sales are permitted.

19.509.2 Security and Odor Control for Certain Marijuana Businesses

- A. The operation shall be entirely indoors, within a fully-enclosed, secure building meeting building codes adopted by the City of Milwaukie and all other applicable state regulations.
- B. Odor shall be managed through the installation of activated carbon filters on exhaust outlets to the building exterior from any rooms used for production, processing, testing, research, and warehousing. Negative air pressure shall be maintained within the rooms. Exhaust outlets shall be a minimum of 25 ft from a property line.
- C. An alternative odor control system may be approved by the building official based on a report by a mechanical engineer licensed by the state of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.



**Regular Session
Agenda Item No.**

6

Other Business



**MILWAUKIE CITY COUNCIL
STAFF REPORT**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: Intergovernmental Agreement – C800 Radio Group

From: Captain Mark Dye

Date: July 5th, 2016

ACTION REQUESTED

Approve an ordinance to allow the City to become a party to an intergovernmental agreement authorizing the Clackamas 800 Radio Group and authorize the City Manager to sign an intergovernmental agreement on behalf of the City.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

In August of 2015, LOCOM Director Leslie Taylor and Chief Bartol presented information to Council on issues related to emergency communications systems in Portland, Washington County and Clackamas County. They provided information on how both the Portland radio system (known as BOEC) and the Clackamas County System (known as C800) were reaching end of life and were in desperate need of replacement. They explained how Portland had already undergone the upgrade, and how C800 was in the process of putting forth a bond to replace their system. They further explained our unique position in that we currently use the BOEC system, but desire to move to the C800 System. They informed council that if we did not move to the C800 system, we would need to pay for a new dispatch console in the center that would be compatible with the BOEC upgrades. It was estimated that the console would cost approximately \$150,000.

The Council agreed that if the C800 bond were to pass, it would make sense for the City of Milwaukie to take advantage of the opportunity to move from the BOEC system to the C800 System.

BACKGROUND

On May 17th, 2016, Clackamas County Voters passed the C800 Emergency Communications Bond, ballot measure 3-476. The citizens of Clackamas County, to include the City of Milwaukie, will be taxed for this system upgrade. This IGA is the governance needed for us to

participate in the C800 group. This IGA has been reviewed by the City's Attorney's Office and no changes were identified.

FISCAL IMPACTS

We expect that fiscal impacts will be negligible as both C800 and BOEC charge fees per radio.

WORK LOAD IMPACTS

Other than the coordination needed to switch systems, we don't for see any additional work load impacts.

ALTERNATIVES

None identified.

ATTACHMENTS

1. Ordinance
2. Intergovernmental Agreement Clackamas 800 Radio Group.
3. Clackamas 800 Radio Group Bylaws.



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No.

An ordinance of the City of Milwaukie, Clackamas County, ratifying the formation of Clackamas 800 Radio Group and authorizing the City Manager to execute the Intergovernmental Agreement on behalf of the City of Milwaukie.

The City Council of the City of Milwaukie does hereby ordain as follows:

Section 1: By enacting this Ordinance the City hereby creates an intergovernmental authority as provided by ORS 190.003 through 190.085 which shall be known as Clackamas 800 Radio Group. The Intergovernmental Agreement, attached hereto dated November 1, 2000 – Amended May 25, 2016 and incorporated herein by reference, shall become effective on the effective date of the last ordinance enacted by the parties to the Intergovernmental Agreement.

Section 2: The public purpose for the intergovernmental entity is to provide cooperative and coordinated effort among local governmental entities relating to an 800MHz Public Safety communication system, as more particularly set out in the Intergovernmental Agreement.

Section 3: The powers, duties, and functions of the intergovernmental entity are as set out in the Intergovernmental Agreement.

Section 4: The City Manager is hereby authorized to execute the Intergovernmental Agreement on behalf of the City.

Section 5: The City Council hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the peace, health or safety of the residents of the City. Accordingly, this Ordinance shall be effective upon the date of its first reading and adoption by unanimous vote of the City Council pursuant to ORS 189.550(3).

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

INTERGOVERNMENTAL AGREEMENT

Clackamas 800 Radio Group

THIS AGREEMENT is made and entered into, pursuant to ORS 190.010, and by and among the City of Canby, City of Gladstone, City of Lake Oswego, City of Milwaukie, City of Oregon City, City of Sandy, City of West Linn; City of Molalla; Boring Fire District, Canby Fire District, Clackamas County Fire District Number 1, Estacada Fire District, Sandy Fire District; Tualatin Valley Fire and Rescue; Molalla Fire District; Colton Fire District; and Clackamas County (herein "Initial Partners").

WHEREAS, the sharing of two-way radio communications system resources results in benefits to the Partners and to the public; and

WHEREAS, the Partners have determined a need to construct, implement, and operate Phase 1 of an 800 MHz trunked radio system (Radio System) to serve the Partners' jurisdictions; and

WHEREAS, the participating jurisdictions desire to establish **Clackamas 800 Radio Group** (herein "Agency") for the purposes described herein; and

WHEREAS, the Agency is to provide cooperative and coordinated effort among the Partners in the development and operation of two-way radio systems; and

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, it is agreed as follows:

1. CREATION:

The Partners hereby create an intergovernmental entity as provided by ORS 190.003 through 190.085; and it shall be known as **Clackamas 800 Radio Group** (Agency).

2. DEFINITIONS:

The following is a definition of terms used herein:

- A. "Members" shall mean political jurisdictions or entities that are not providing public safety services that utilize the Radio System and have not been accepted as Partners.
- B. "Minor Equipment Replacement" shall mean new or used equipment convenient or necessary to maintain the operation of the Radio System as provided in the Agency annual budget, provided however that the Equipment shall not exceed an acquisition, repair, or replacement cost of \$25,000.
- C. "Partners" shall mean those political jurisdictions or entities providing public safety services and signature to this agreement. Further it shall include those political jurisdictions providing public safety services that are added to this agreement in the manner defined herein.

- D. "Public safety" or "public safety services" shall mean providing Law Enforcement and/or Fire/EMS services by a Partner, regardless of whether provided through a department of the Partner or by the Partner generally.
- E. "Public service" shall mean those services provided by political jurisdictions or entities to the general public such as schools, public works, vector control, water, sewer, etc.
- F. "Radio Units" shall mean radio units whether portable / mobile / control station / data radios enabled or programmed on the Radio System.
- G. "Users" shall mean entities that utilize the radio system and are either Partners or Members as defined above.

3. POWERS:

The Agency is vested with all powers, rights, duties, including expenditure of appropriate funds and retaining of personnel necessary for performing those functions in the coordinated delivery of the following services. Those functions include, but are not limited to:

- A. Adopt goals and objectives by which to own and operate the Radio System as well as long-range plans (five-year time frame) for continued operations.
- B. Implementation of the goals and objectives and long range plans to the extent funds are appropriated for that purpose by the Partners.
- C. Adoption of an annual budget and approval of budget modifications as required.
- D. Review and evaluate efforts for effectiveness and conformance with established objectives short and long term.
- E. Approve new Partners. (New Partners participation rights and liabilities for capital and operating cost sharing shall be as set forth in this Agreement.)
- F. Approve Members who will utilize the radio system and determine a fee schedule for this use.
- G. Approve future phases of the Radio System build out including funding strategies for capital and operating costs, recognizing that this power of the Agency does not obligate the Partners to participate in the funding or management of future phases assets.
- H. Select personnel as deemed appropriate or required for the Agency.
- I. Resolve operating problems of the Radio System as brought before the Agency.

4. GOVERNING BODY:

There is hereby established a governing body and it shall have the duties as provided below.

- A. The Agency shall be governed by a Board of Directors (herein "Board") consisting of one representative from each Partner.
- B. Partners, through the Board of Directors, govern the development, management, and operation of the Radio System. (Members are not responsible for the management of the Radio System and shall not be part of the governance of its

operation.) Each Partner shall appoint, at its pleasure, one primary representative, and one alternate representative who may attend all Board meetings. The primary and alternate representatives may participate in all discussions of the Board; provided however that the vote of the Partner shall be cast only by the primary representative, unless the primary representative is absent, in which event the alternate representative may cast the Partner's vote,

- C. Each Partner, through a power of attorney or similar designation, may allow for another Partner to represent it on the Board, in which event the vote of the Partner may be cast by the representing Partner's representative, as provided in subsection (b) above.
- D. The Board shall be responsible for the adoption of Agency's annual operating budget and revisions thereto.
- E. The Board shall meet at a minimum of once a year or more frequently as determined by the Chair or as requested by any Partner.
- F. All meetings of the Board shall be held in accordance with Oregon Public Meeting Laws, ORS 192.610 et seq.
- G. A quorum of the Board shall be a majority representation of the Partners for the purposes of deliberation and decision of the Board.
- H. All decisions of the Board, unless otherwise provided herein, shall require a majority vote of the Partners in attendance.
- I. The Board shall adopt bylaws governing its procedures and including, at a minimum, 1) time and place of regular meetings; 2) method and manner of calling special meetings; 3) method, term, and manner of election of Board officers; 4) procedures for executing documents on behalf of Agency; and 5) development of personnel and purchasing policies.
- J. The Board shall elect a chair, first vice-chair, and second vice-chair. The chair, or in the chair's absence, the first vice-chair, or in their combined absence, the second vice chair, shall preside over all Board meetings.
- K. The Board shall appoint a clerk of the Board to be responsible for providing notices of meetings and keeping of minutes as required by Oregon Public Meetings Laws.
- L. The Board shall adopt goals and objectives both short term (operations) and long term.
- M. The Board shall consider and adopt policies relating to ownership and maintenance responsibilities for equipment necessary for the operation of the Agency.
- N. The Board shall perform or have performed annually an evaluation of the effectiveness of the organization to establish its ongoing goals and objectives.
- O. The Board, upon unanimous approval of all Partners, shall approve development and expansion of the system including future phases, which may include funding strategies for capital, and operating costs and funding formulas. If unanimous approval cannot be obtained for a future phase, then the governance, funding, and development of the future phases shall be by separate agreement but this

agreement shall continue with respect to Phase 1 of the Radio System. This subsection shall not be amended except upon unanimous approval of all Partners.

- P. The Board shall approve contract employment terms and conditions for employees (if any)
- Q. The Board shall provide oversight and direction to all Agency operations,
- R. The Board shall adopt implementing policies and strategies for Agency service levels,
- S. The Board shall provide for an annual audit of the Agency's finances,
- T. The Board shall approve all contracts in compliance with the Agency's purchasing policies,
- U. The Board shall approve new Partners.
- V. The Board shall approve Members who will utilize the Radio System and determine a fee schedule for Member's use.

5. TECHNICAL OPERATING COMMITTEE:

The Board may establish additional technical operating committees as required. These groups shall include appropriate technical staff from each Partner as may be appointed by the Board.

6. CAPITAL COST DETERMINATION AND INITIAL PARTNER LIABILITY:

This section no longer applicable as of June 30, 2009 and thus deleted

7. AGENCY OPERATION FUNDING:

The Agency is to be self sufficient in its operation and obtain funding from Users of the Radio System.

A. Partners

Operating Costs shall be allocated among the Partners as follows:

- a) The Net Operating Cost shall be the budgeted amount required for the operation and minor equipment replacement for the upcoming year, plus any carry forward operating deficit from the prior fiscal year, after deducting the budgeted income to be received from Members and any other sources and any carry forward operating balance from the prior fiscal year.
- b) Each March 1, for the fiscal year beginning July 1 and ending the following June 30, the Agency shall:
 - i. Determine the total number of Partner radio units enabled or programmed on the Radio System, or requested to be enabled or programmed on the Radio System commencing July 1.
 - ii. Divide the Net Operating Cost by the total number of Partner radio units, to produce the Per Radio Unit Operating Cost Amount.

- iii. Multiply the Per Radio Unit Net Operating Cost Amount by the number of radio units for each Partner.

B. Members

Members shall pay a fee for use of the system as follows:

- a) Member annual cost shall be determined by the Member radio unit fee as determined by the Board multiplied by the number of units enabled or programmed on the system.
- b) Members are not subject to the Partner capital cost or operating cost allocation.

8. NEW PARTNERS OR ADDITIONAL RADIOS ADDED BY PARTNERS:

A. Capital Cost Recovery - This section no longer applicable as of June 30, 2009 and thus deleted

B. Operating Cost Recovery

If a Partner wishes to increase the number of radio units activated or authorized for activation on the Radio System after March 1, the Partner shall pay the Per Radio Unit Operating Cost Amount for each fiscal year that the radio unit was not included in the Partner's radio unit number used for determining the Partner's Net Operating Cost Amount liability. (No credit shall be given for partial year.) Example: if a radio unit was enabled effective April 1 and it had not been included in the Partner's number of radio unit's calculation in Section 7, the Partner would pay the current fiscal year's and the next fiscal year's Per Radio Unit Operating Cost Amount.

C. Restricted Use of Monies.

The monies received by this section shall be placed in the General Fund, to reduce future Net Operating Cost payments by the Partners. These monies shall be for the sole and exclusive use of the Agency operation and administration, subject only to review during adoption of Agency's annual budget.

9. OPERATION OF THE AGENCY:

The Agency will provide, through its own employees or by contracted personal services, fiscal operational services, such as finance, legal, personnel, required for the operation of the Agency.

10. STAFFING:

The Board, when authorized by the budget, shall hire such staff as necessary to provide expected service levels. Such staff shall perform in accordance with policies and procedures to be established by the Board

If a Partner provides a loaned employee to the Agency, the loaned employee shall be under the exclusive control and direction of the Board, or such other employees as the Board may designate, while performing assigned duties for the Agency.

11. INCREASING PARTNERSHIP / MEMBERSHIP:

The Board shall develop a process for allowing new Partners or Members of the Radio System.

- A. The Radio System is primarily a public safety related system, Phase I serves a portion of Clackamas County (as determined by the coverage area of the Radio System). Partnership privileges will only be afforded to political jurisdictions within Clackamas County located within the coverage area of the Radio System with public safety departments or functions. Note: Political jurisdictions that have public safety departments or perform public safety services (Law Enforcement and/or Fire/EMS) must join as Partners and may not join as Members)
- B. Other political jurisdictions or entities may utilize the system in a Membership status with priority afforded to those jurisdictions or entities located in Clackamas County and providing services directly within the coverage area of the Radio System.
- C. The initial system design and intent is to encourage Membership from other political jurisdictions or entities in Clackamas County providing ancillary services such as utilities, public works, or schools and their Membership shall not be unreasonably denied.
- D. Membership shall be limited to political jurisdictions or entities responsible for providing public services such as utilities, public works, or schools.
- E. To be eligible for Membership entities shall be required to be bound by the terms and provisions of the Membership Agreement to be developed by the Board.
- F. New Partnership entities shall be required to be bound by the terms and provisions of this Intergovernmental Agreement.

12. EQUIPMENT:

The Board shall develop proposed policies relating to ownership, replacement, and maintenance responsibilities for equipment necessary for the operation of the Agency.

13. DURATION, WITHDRAWAL AND TERMINATION:

This Agreement is perpetual and the Agency shall continue from year-to-year provided, however,

- A. Any Partner may withdraw from the Agency upon providing written notice to the Chair of the Board not later than June 30 of any year for withdrawal effective July 1 of the following calendar year; and
- B. If an Initial Partner withdraws from the Agency prior to the satisfaction of their portion of the Initial Partner's Allocated Capital Cost Amount they will be responsible for that portion of the capital cost until satisfied; payment shall be made on the same terms and basis.
- C. The Agency may be dissolved upon mutual agreement of all Partners anytime after the conditions of the Memorandum of Understanding between the Agency and Clackamas County are met.
- D. No modification may be made to the capital funding structure without the unanimous approval of all Partners because once the Initial Partner's Allocated Capital Cost Amount has been determined, that figure has been fixed for purposes of repayment of the Capital Cost.
- E. No amendment may be made of this section lengthening the time required for notice of intent to withdraw except upon unanimous approval of the Partners.

14. ASSIGNMENT OF PARTNERSHIP (AND RADIOS):

- A. Upon a change in a partner's jurisdictional public safety function boundaries, a Partner may assign part or all of a partner's rights, obligations and liabilities under this Agreement to the succeeding political jurisdiction providing public safety functions within the area formerly provided by the Assignor Partner. The Assignor Partner shall notify the Agency of the transfer in jurisdictional responsibility for providing public safety functions, and the number of radio units assigned to the Assignee Partner.
- B. An Assignee Partner shall not be deemed to be a New Partner for purposes of Section 8 (New Partners or Additional Number of Radios to be Added to Radio System by Partners) above for both capital cost recovery and operating cost recovery liabilities for the radio units assigned to the Assigned Partner by the Assignor Partner, provided the Assignee Partner agrees to assume a portion of the Assignor Partner's outstanding liabilities and obligations, in proportion to the number of the Assignor's assigned radio units and the Assignor Partner's total number of radio units.
- C. Assignment of Partnership shall not be deemed to be a withdrawal or termination of the Assignor Partner for purposes of Section 13 above, as the Assignee Partner shall be deemed to be the successor in interest of the Assignor Partner's rights, obligations and liabilities, whether in whole or in part, under this Agreement and in the operation of the Agency.

15 ATTORNEY FEES:

In the event any party files litigation to enforce this Agreement, or any portion thereof, the prevailing party shall be entitled to reasonable attorney fees and costs, including any fees and costs incurred in an appeal, and as determined by the appropriate court.

16. DIVISION OF AGENCY PROPERTY:

- A. Partners terminating their participation in this Agreement waive all right to Agency owned personal property if the Agency continues to function as a multi-jurisdictional entity for at least 5 years from the date of their withdrawal.
- B. When termination of the Agency occurs, all withdrawing agencies that withdrew within the prior 5 years or are part of the termination of the Agency shall share in the disposition of all property owned by Agency at the time of its termination.
- C. For agencies that withdrew within the prior 5 years, their distribution amount shall be reduced based on the Portland Metropolitan Area CPI during that 5-year period (the value of time) from the date of their withdrawal until the date of termination of the Agency.
- D. All property acquired by Agency after withdrawal of the party will not be considered for distribution to the withdrawing party even though the funds for purchase (forfeiture, grant, or otherwise) were acquired prior to withdrawal.
- E. Notwithstanding any other provision of this Agreement, upon recommendation of the Board, during its annual budget deliberations, may make a disbursement of funds not needed for continuing operation of the Agency to the Partners.

F. This section may not be amended prior to July 1, 2020 without unanimous approval of all Partners.

17. EFFECT OF PARTNERS ACTIONS:

The Partners agree that no Partner will unilaterally make decisions or take actions that will effect the operating relationships or availability of resources to the other Partners.

18. AMENDMENTS:

Except as a section or subsection may otherwise specifically provide, limit, or prohibit, this Agreement may only be changed, modified, or amended upon three-fourths (3/4) or more vote of all Partners.

19. EFFECTIVE DATE:

This Agreement shall be effective on November 1, 2000, or the earliest date thereafter that the governing bodies of the Partners have properly authorized it.

20. SEVERABILITY:

The terms of this Agreement are severable and a determination by an appropriate body having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part, shall not affect the remainder of this Agreement.

21. INTERPRETATION:

The terms and conditions of this Agreement shall be liberally construed in accordance with the general purposes of this Agreement.

22. DEBT LIMITATION:

This AGREEMENT is expressly subject to the debt limitation upon the County, Cities and Districts as outlined in the Oregon Constitution and /or ORS, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with law, are deemed inoperative to that extent.

If a Partner does not appropriate the funds to meet the obligations as outlined herein that Partner shall be precluded from obtaining like services from other entities without fulfilling the obligations as outlined in Article 13.B above. Further that Partner will not be allowed access and/or use of the Radio System.

23. PAYMENT:

- A. Thirty days prior to the date each payment is due for Capital Cost, or Operating Cost Agency will send Partner an invoice covering the cost for the next payment period.
- B. All other charges or fees incurred by the Agency on behalf of the Partner will be invoiced to the Partner monthly, and the Partner shall pay the amount of each invoice within thirty (30) days of its date to the Agency.
- C. Agency may terminate the Partners accessibility and use of the Radio System by giving Partner ten (10) days written notice by certified mail if Partner defaults in its

payment to Agency. Upon receipt of such notice Partner shall have thirty days within which to make such payment to Agency and if not paid Agency may then terminate the accessibility and use of the Radio System.

City of Canby,

City of Gladstone,

City of Lake Oswego,

City of Milwaukie, _____

City of Oregon City,

City of Sandy,

City of West Linn,

City of Molalla,

Boring Fire District,

Canby Fire District,

Clackamas County Fire District # 1,

Estacada Fire District,

Molalla Fire District,

Sandy Fire District,

Tualatin Valley Fire & Rescue,

Colton Fire District,

Clackamas County

CLACKAMAS 800 RADIO GROUP
Bylaws
July 18, 2001

1.1 GENERAL

These Bylaws are established by the Board of Directors (Board) of the CLACKAMAS 800 RADIO GROUP (Agency) as authorized by Section 4 of the "Intergovernmental Agreement for Clackamas Radio System" dated November 1, 2000 (IGA). The Bylaws shall serve as policy for the Board and all groups and committees thereof .

1.2 AGENCY BOARD OF DIRECTORS

1.2.1 Authority of Board

All Agency power and authority is vested in the Board, which shall govern and be the final authority in all matters related to Agency.

1.2.2 Powers of the Board

1.2.2.1 The Board shall exercise all power as is necessary, proper or convenient to carry out the functions of the Agency including, but not limited to the ability to contract with persons and entities for the provision of all services, property or equipment necessary to fulfill the purposes of the Agency, the adoption and implementation of personnel policies and rules, the employment of personnel and the adoption of purchasing policies and rules. .

1.2.3 Appointment of Board Members (Primary and Alternate)

1.2.3.1 Appointment of a Board Member by an Agency Partner shall be effective upon written notification of the appointment by the Partner filed with the Agency Clerk.

1.3 AGENCY BOARD OFFICERS

1.3.1 Elections

1.3.1.1 Election of the Second Vice Chair shall be held at the Third Quarterly meeting (i.e., January), with the term beginning immediately. Nominations may be by Committee or from the floor.

1.3.1.2 In the case of a vacancy of a Board Officer position, an election to fill the vacancy shall be held at the next Board meeting with the duly elected member immediately taking office upon election.

1.3.1.3 There shall be no term limits for Board officers.

1.3.2 Term and Removal

- 1.3.2.1 Officers shall serve one-year terms and progress to the next higher Board position as those are identified in Sections 1.3.4 and 1.3.5.
- 1.3.2.2 By a two-thirds vote of those present and voting, the Board may remove any Board Officer for cause as 'cause' may be defined by Board rule.

1.3.3 Board Chair

- 1.3.3.1 The Chair will call and conduct all Board meetings including the establishment of the Agenda for every public meeting of the Board.
- 1.3.3.2 The Chair, or their designee, shall cause the delivery of all necessary materials to Board members at least 14 days prior to any regular public Board meeting.
- 1.3.3.3 The Chair, or their designee, shall be responsible for maintaining all board and Agency records.
- 1.3.3.4 The Chair may establish, charge and appoint Committees as needed. Each Committee shall have a minimum of three (3) members with no restrictions as to the type of partner (city, county, special district) represented.
- 1.3.3.5 The Chair may dissolve Committees, with the concurrence of the Board.
- 1.3.3.6 With Board authorization as that may be expressed in Board rule, motion or resolution, the Chair may sign on behalf of Agency any agreement or other document necessary to implement the Agency's mission.
- 1.3.3.7 The Chair may assume such other responsibilities as are deemed necessary for the proper functioning of the Agency with the prior concurrence of the Board. However, in the event the Chair deems there to be an emergency affecting the integrity of the Agency, its property or personnel, the Chair may act unilaterally but must inform the Board, as soon as practicable after the emergency, the rationale for his/her actions and obtain the Board's concurrence for the action(s) taken.

1.3.4 First Vice-Chair

- 1.3.4.1 The First Vice-Chair shall act as Chair in the absence of the Chair.

1.3.5 Second Vice-Chair

1.3.5.1 The Second Vice-Chair shall act as Chair in the absence of the Chair and First Vice-Chair.

1.3.6 Clerk of the Board

The Clerk shall be responsible for providing notice of all Agency public meetings and maintain the minutes thereof consistent with Oregon law. The Chair may assign other duties to the Clerk as the Chair or Board deem necessary.

1.4 BOARD MEETINGS

1.4.1 Agenda

1.4.1.1 The normal Board meeting agenda shall be as follows:

- Call meeting to order
- Roll call
- Action on minutes
- Public comment
- Communications
- Clerks report - financial report
- Committee reports
- Old business
- New business
- Executive session
- Open agenda
- Adjournment

1.4.1.2 An Agency Partner may submit a written request to the Chair to place a specific agenda item on the next meeting agenda. The request must be made a minimum of ten days prior to the scheduled meeting. The item shall then be placed on the Agenda for discussion by the Board.

1.4.2 Meeting Dates and Location; Special Meetings

1.4.2.1 The Board shall meet not less than every three months, within 30 days after the beginning of the 1st of January, April, July, and October, as may be set by the Chair.

1.4.2.2 Special meetings and emergency meetings of the Board may be used to consider any topic not otherwise prohibited by law and shall be called for consistent with the terms of the Oregon Public Meetings Law. The Chair may, in the exercise of his/her discretion, call for

special meetings as necessary or, if the Chair is unwilling to call such a meeting on his/her own, then upon the request of not less than four (4) Partner representatives, the Chair shall call for a special meeting to consider the topic or issue causing the concern.

1.4.2.3 The Board shall meet at such place as set by the Board from time to time, or in the absence of Board action, then as set by the Chair.

1.4.2.4 Robert's Rules of Order. Except as may be provided elsewhere in these By-laws, the Board's meetings shall be run consistent with the terms of Robert's Rules of Order (9th Ed.).

1.5 EMPLOYMENT OF PROFESSIONALS

1.5.1 The Board may retain the services of professionals to provide advice and counsel or services to the Agency.

1.5.2 A certified Public Accountant will conduct annual audits.

1.5.3 A licensed attorney will provide legal services and counsel.

1.5.4 Such other professionals as determined by the Board.

1.6 AMENDMENTS TO BY-LAWS.

1.6.1 Any Board member may propose amendments to the Bylaws. Board members shall be provided a written copy of the proposed amendment(s) at least 30 days prior to the Board meeting that the amendment(s) are to be voted on.

1.6.2 Amendment(s) may be voted on at regular scheduled Board meeting or a special Board meeting.

1.6.3 A two-thirds majority vote of Board members present and voting at Board meeting is required to amend these Bylaws.

1.6.4 Amendment(s) will be considered and a copy of the proposed amendment(s) shall be distributed to all Board members.

1.6.5 The Board shall tally the ballots at the meeting in which an amendment is voted on. The results will be reported to those present at the meeting and documented in meeting minutes.



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. B.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council
Through: Bill Monahan, City Manager
Alma Flores, Community Development Director
Subject: **Bicycle and Pedestrian Accessibility Program**
From: Charles Eaton, Engineering Director
Date: July 8, 2016

ACTION REQUESTED

Solicit final public testimony before adopting the proposed Bicycle and Pedestrian Accessibility Program.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

October 23, 2014: Staff presented a summary proposal to gauge council's interest on increasing the City's current rate of completing sidewalk improvements. Initial discussion was to verify the desire to intensify the City's current rate of completing sidewalk projects. Discussions centered on alternatives to sidewalk requirements, utility obstructions and funding options. Extensive discussions revolved around sidewalk width and placement requirements with the desire to analyze alternatives within the right-of-way. Additional discussions revolved around local improvement districts and other funding options to accomplish the goal of increasing sidewalk construction within the city.

September 17, 2015: Staff presented a discussion on the American with Disabilities Act (ADA) transition plan and public sidewalk accessibility needs of the City with the concept of forming a new program similar to the city street program for sidewalk needs. Council directed staff to create a program to address these needs as well as the bicycle needs of the City. Council also designated the Public Safety Advisory Committee (PSAC) as the Community Planning Advisory Council to develop the program in compliance with the requirements of ADA.

February 2, 2016: PSAC presented a concept map establishing priority routes for the new Bicycle and Pedestrian Accessibility Program (BPAP) in accordance with ADA transition plan requirements. City Council gave additional direction on the need for connectivity within the plan and the desire to elevate areas as needed to Priority 1 to facilitate that connectivity.

April 21, 2016: Staff presented a Draft Corridor Plan and financial requirements to solicit council input on additions and/or changes desired. Council discussion centered on the level of corridor identification and the desire to increase the study to include safe routes to school corridors and include them within the overall plan. Staff also received direction on the desire to have some of the specific projects prioritization changed and for the inclusion of other specific corridors within the plan.

June 21, 2016: PSAC presented the draft Bicycle and Pedestrian Accessibility Plan together with the public comments received during the public outreach effort for City Council Review and

Comment. Council discussed the draft plan, prioritization process, potential funding scenarios, and the next steps. PSAC and Staff received direction needed on basic program development for the proposed plan.

BACKGROUND

PSAC has been developing the proposed priority plan over the last ten months. The process has involved the Neighborhood Associations (NDA's) with each of the NDA representatives to PSAC who solicited and gave input to the identified corridors within their respective NDA's. The PSAC members also assisted staff in the identification of facilities covered by the ADA act that were required to be served within each NDA.

After the February 2nd meeting PSAC members discussed the identification of additional priority corridors, reassigned some of the previous priorities and compared all the corridors with the adopted master plans to facilitate the council's desire for better connectivity.

After the April meeting PSAC members evaluated the primary corridors to include additional routes that will function as safe routes to schools. They looked at both the distance from school, existing school boundaries and logical walking corridors during this process. Staff inspected and evaluated the additional routes identified by PSAC and has develop estimated costs to bring these facilities up to current code. Preliminary costs were presented to CUAB to review funding options and will be discussed again at their July meeting. Staff visited all the NDA's and was at the Farmers Market in June to solicit input on the types of facilities that they would like to see prioritized. Staff has also done specific project prioritization, based on the public input received, with PSAC and CUAB to create a prioritized Capital Improvement Plan.

After the June meeting Staff finalized the Accessibility Plan of the new program and presented the final draft Plan to PSAC at the June meeting. PSAC amended and approved the draft plan with a recommendation to City Council to approve the proposed Bicycle and Pedestrian Accessibility Plan.

CUAB is scheduled to meet on July 14, 2016 to make a recommendation to City Council on the proposed funding aspects of the accessibility plan. Staff will provide that recommendation when available and present it to City Council at the meeting.

FISCAL IMPACTS

City Council will need to determine the final funding level, if any, for the proposed plan once adopted. Any new revenues generated will need to be allocated through a supplemental budget.

WORK LOAD IMPACTS

Engineering staff time will be needed to create the proposed program and additional engineering staff will probably be required to implement and administer the program if adopted.

ALTERNATIVES

Council could choose to adopt the proposed plan and program as submitted, could choose to solicit additional public input on the proposed plan and program or could direct staff to make revisions to the proposed plan and program.

ATTACHMENTS

1. Proposed Bicycle and Pedestrian Accessibility Program
2. Proposed Ordinance



Bicycle & Pedestrian Accessibility Program



Contents

1. Overview
2. Goals & Policies
 - a. Pedestrian Network
 - b. Bicycle Network
3. History
4. Authority
5. Program Development
 - a. ADA Transition Plan
 - b. Pedestrian Master Plan
 - c. Bicycle Master Plan
 - d. Accessibility Plan
 - e. Program Cost Goal
6. Public Involvement
7. Project Selection
8. Accessibility Plan
 - a. Priority Corridors
 - b. Existing Conditions
 - c. Project Implementation
9. Funding Plan
10. Action Plan
 - a. Fee Determination
 - b. Fee Review Process
 - c. Fee Billing Process
 - d. Low Income Exemption
 - e. Annual Reporting

Appendix A: ADA Transition Plan for Accessibility in the Public Right-of-Way

Appendix B: Public Outreach Materials

1. Overview

Milwaukie city officials are responsible for maintaining 74.4 miles of Right-of-Way which includes allowances for pedestrian and bicycle facilities. The recent City of Milwaukie Transportation System Plan (TSP) says this concerning these facilities.

Throughout Milwaukie, pedestrian facilities are generally deficient. Although some arterial and collector streets in the city provide limited sidewalks as shown in Figure 3-2, the north and east areas have many collectors and arterials lacking sidewalks. Many of the neighborhood and local streets throughout the city do not have pedestrian facilities.

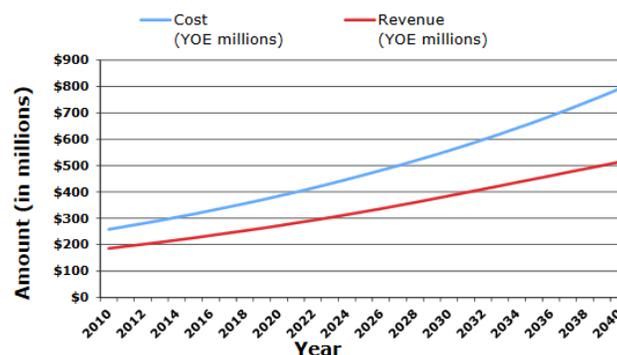
The lack of east/west and north/south on-street bicycle facilities creates significant gaps in the bicycle system for travel both in and around the city. There are two east/west roadways that include bike lanes in the city: King Rd and Lake Rd. However, neither of these facilities reaches the downtown area and/or connects with other facilities that could allow for travel to other destinations. There are also two north/south roadways that have bike lanes: Linwood Ave and 17th Ave. Similar to the east/west roadways, these corridors are not continuous.

The 2013 Milwaukie TSP identified 1.1 billion worth of pedestrian and bicycle improvements needed throughout the City without funding sources. The Primary funding source for improvements within the public right-of-way is state gas taxes. These funds are utilized for operations, maintenance and preservation activities in addition to capital improvements. The 2013 TSP identified only 2.6 million available from these funds for capital improvements during the 22 year planning period, leaving a huge gap. The City of Milwaukie is not alone in this predicament. The 2004 Regional Transportation Plan described the problem this way:

. . . revenues from the State Highway Trust Fund, which is funded from the state gas tax revenues and related truck fees and vehicle registration fees, has become the primary source of transportation funding for many jurisdictions in the region. The problem the region is facing by relying primarily on this revenue source is that it is subject to two factors that reduce its purchasing power over time: inflation and increasing fuel efficiency. Therefore, the gas tax cost per mile driven in Oregon (in current \$) has decreased from 2.6 cents per mile in 1970 to 1.3 cents per mile today.¹

The 2014 Regional Transportation Plan showed this funding gap with a figure.

Figure 3.10 Local Operations, Maintenance and Preservation Costs and Revenues²



¹ 2004 Regional Transportation Plan, Chapter 5: Growth and the Priority System, page 5-34.

² 2014 Regional Transportation Plan, Chapter 3: Investment Strategy, page 3-29.

2. Goals & Policies

The accessibility program was designed to include both bicycles and pedestrian needs. Goals were established to help in the development of the final program. To accomplish these goals the plan and program needed to comply with the goals established by the TSP and together will be used to guide the City's policies on bicycle and pedestrian access and connectivity.

A. Pedestrian Network

City Council established several goals for a proposed program that would accomplish the following:

- Create a new Americans with Disabilities Act (ADA) Transition Plan for the Public Right-of-Way.
- Establish priority corridors to create a comprehensive plan that connects facilities identified within the ADA transition plan requirements.
- Recommend additional connections to provide a better interconnectivity between identified priority corridors.
- Incorporate corridors that will create a backbone for a safe route to school network.

B. Bicycle Network

The City Council wanted to include bicycle facilities into the overall accessibility program development. This was done by incorporating the TSP Bicycle Master Plan in the determination of priority corridors and including all bicycle improvements identified together with pedestrian improvements in the resulting improvement and funding plan.

3. History

Staff presented a summary proposal to gauge council's interest on increasing the City's current progress of completing sidewalk improvements on October 23, 2014. The initial discussion was to verify the desire to intensify the City's current rate of completing sidewalk projects. Discussions centered on alternatives to sidewalk requirements, utility obstructions and funding options. Extensive discussions revolved around sidewalk width and placement requirements with the desire to analyze alternatives within the right-of-way. Additional discussions revolved around local improvement districts and other funding options to accomplish the goal of increasing sidewalk construction within the city.

Staff presented a proposal to create a new ADA Transition Plan for Accessibility within the Public Right-of-Way in connection with the creation of a public sidewalk accessibility program and possibly a bicycle accessibility element to the program on September 17, 2015. Discussions centered on creating a plan that would meet all the federal requirements plus be more comprehensive in providing pedestrian and bicycle accessibility throughout the city. Additional discussion revolved around potential funding options and the need to be more creative in the development of the improvement plans that reduce costs while meeting the needs of the city.

During the September 17, 2017 City Council meeting, the Public Safety Advisory Committee (PSAC) was chosen by the City Council to lead this effort and PSAC has been working on the development of the City of Milwaukie's Bicycle and Pedestrian Accessibility Plan (BPAP) since that time. PSAC has developed the plan with the assistance of the Neighborhood District Associations, the Citizen Utility Advisory Board, City Council and public involvement.

4. Authority

City Council established the Public Safety Advisory Committee as the Community Planning Advisory Council to create a new ADA Transition Plan at the September 17, 2015 Study Session. In addition, City Council directed staff to create a new program to promote both pedestrian and bicycle accessibility in conjunction with the Public Safety Advisory Committee and the Citizen Utility Advisory Board. Council further directed that the new program be developed to be a comprehensive look at the City of Milwaukie's pedestrian and bicycle needs together with the development of potential funding scenarios, similar to the Street Surface maintenance program.

5. Program Development

PSAC began with the ADA Transition Plan and developed a list of facilities identified within the requirements of Title II of the Americans with Disabilities Act throughout the City. Next the identified facilities were connected together with corridors along the priorities established by ADA. PSAC and the NDA's then reviewed the priority corridors for additional recommendations to provide further connectivity within the network. The completed network was compared to the existing TSP Bicycle and Pedestrian Master Plans. City Council provided input on the concept plan and made recommendations to increase the network by revising some priority 2 corridors to priority 1 and increasing the corridors to include more Safe Route to School (SRTS) corridors. PSAC and the NDA's revised the priority corridors to include those additional elements plus some additional master plan elements into the Draft Accessibility Plan. After the draft plan was reviewed through a series of public meetings and surveys a proposed accessibility plan was developed and prioritized in accordance with the public comments received.

A. ADA Transition Plan

The new City of Milwaukie ADA Transition Plan is incorporated within the final Bicycle and Pedestrian Accessibility Program. While the ADA Transition Plan is a stand-alone document the development of the BPAP program is intended to include all the aspects of the ADA Transition plan and that adjustments can be made easily to account for changes in the ADA Transition plan as necessary.

B. Pedestrian Master Plan

The City of Milwaukie's TSP includes a substantial Pedestrian Master Plan. The BPAP was developed in conformance with the existing TSP Master Plan but is not intended to include all of the capital improvements identified or to replace the Pedestrian master Plan. Instead the accessibility plan is intended to build upon the existing plans by providing additional detail and prioritization of the projects presented creating a way to implement the adopted master plan. When conflicts existed priority was given to the ADA Transition Plan requirements.

C. Bicycle Master Plan

The City of Milwaukie's TSP also includes a Bicycle Master Plan. The BPAP Accessibility Plan is developed in conformance with the existing TSP master plan but is limited to the corridors identified. The resulting plan provides for the master plan bicycle elements within the identified corridors, but is not intended to include all the identified bicycle master plan capital improvement projects in the TSP into the BPAP Accessibility Plan.

D. City-wide Plan

The completed plan is intended to be applied city-wide. The program includes provisions for improvements on unidentified streets through the project selection process and the City's Capital Improvement Plan (CIP) when an eligible project, not included within the Accessibility Plan, is identified and/or prioritized the project can be added through the process as long as it meets the intent of the program. This also applies to the inclusion of projects identified through the ADA request for service or grievance procedure.

E. Program Cost Goal

The overall goal is to develop a funding plan that will accomplish the priority 1 and 2 corridor improvements within the 20 year planning horizon. The program would accomplish this through direct funding and by providing matching funds to other programs and grants. The program is not intended to fund all of the needs identified within the planning horizon at this time.

6. Public Involvement

The program has been developed with extensive public involvement. The PSAC took the lead in plan and program development. PSAC consists of nine citizens including representatives from each of the seven residential NDA's. The NDA's helped with the key elements of the plan by locating the facilities covered by the Americans with Disabilities Act, helping with the determination of priority corridors, and providing input to PSAC on the draft accessibility plan.

PSAC directed staff to solicit prioritization input from the City Council, CUAB, the seven residential NDA's, and from citizens at the Farmers Market on the draft accessibility plan as well as input on the desired type of projects to focus on. The results of which are included in Appendix B.

City Council has held 3 public meetings to discuss the various aspects of the plan and program development: PSAC presented an update on February 2, 2106; A concept map was refined and a draft corridor plan was presented to council on April 21, 2016; After additional refinement PSAC presented a draft plan on June 21, 2016.

PSAC held monthly meetings that were open to the public to discuss the plans development and solicit input along the way. PSAC approved the proposed plan and made a recommendation for City Council approval on June 23, 2016.

Additional public input was solicited on the proposed plan during July's first Friday event in regards to preferred funding options. The same input was solicited through the cities web site, the results of both are provided in Appendix B.

City Council held a discussion of the proposed plan and program during the regular session on July 19, 2016 and adopted the program by ordinance on _____, 2016.

7. Project Selection

As part of the annual Capital Improvement Plan development process, the Public Works and Engineering departments update the BPAP project schedule for the coming six years. In addition, a more detailed schedule of pedestrian and bicycle improvements will be included within the CIP. The project list development begins with review of the BPAP Accessibility Plan. The Engineering Director selects a package of projects that best matches the recommendations generated by the BPAP, the cost benefits of grouping multiple projects (both coordinating with other utility projects and SSMP projects to minimize mobilization costs), and other project needs (for instance ADA request for service requests).

In allocating resources among projects, staff prioritizes projects with the greatest return (i.e., accessibility plan improvements, coordination with other capital improvements, and cost-effective contracting practices). Remaining funds are dedicated to new construction and reconstruction projects on priority corridors, with some funds set aside for ADA requests for services.

By tracking and recording completed projects in the BPAP database, the Engineering Department maintains the quality of the data used to inform the project selection process.

Cost estimates include 3% inflation in construction costs per year. All reconstruction and rehabilitation costs include a 20% engineering and contingency.

8. Accessibility Plan

The plan to achieve bicycle and pedestrian accessibility consists of three components:

- Determination of Priority Corridors
- Determination of Existing Conditions
- Development of Implementation Plan

These components work together as the basis to determine the capital improvements needed to achieve the goals and policies of the program.

A. Priority Corridors

The Public Safety Advisory Committee (PSAC), with the assistance of the Neighborhood District Associations (NDA's), has developed the priority corridors to meet the following three needs:

- ADA connectivity between priority facilities
- Pedestrian connectivity to create the backbone for Safe Routes to Schools infrastructure needs.
- Bicycle connectivity and enhancement in accordance with the TSP within the priority corridors identified.

The priority corridor map was developed in conjunction with citizen and council input at PSAC public meetings, City Council Work Sessions, NDA meetings, Citizen Utility Advisory Board (CUAB) public meetings, Farmers Market and First Friday events. The resulting map (Figure 8.1) identifies the priority corridors on the streets indicated. The streets that are not identified are classified as Priority 3.

The priorities identified are utilized during the implementation of the plan and to assist in the prioritization of the projects, the funding options and the individual project selection process.

B. Existing Conditions

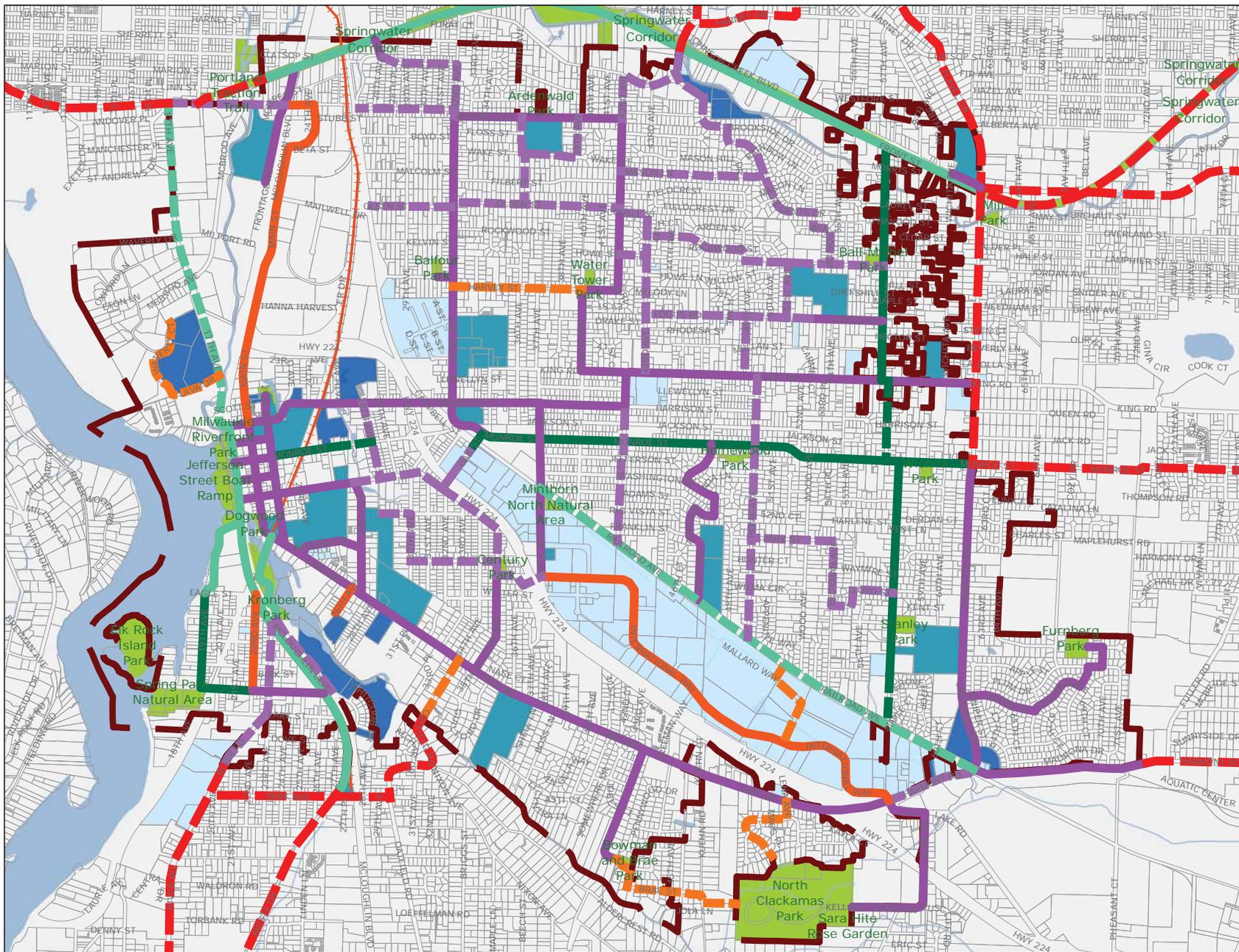
All of the existing pedestrian facilities within the priority corridors were inventoried and are indicated in figure 8.2. In addition, all of the existing bicycle facilities were inventoried and are indicated in figure 8.3. The condition survey of the existing facilities is used to determine both the need for improvements and the type of improvements needed. The existing condition survey is also utilized to determine the planning level capital improvements cost of the identified improvements.

The City will continue to survey the remaining existing pedestrian and bicycle facilities throughout the City (Priority 3) and update the existing facilities map periodically to include new construction and/or modifications to the bicycle and pedestrian systems.

C. Project Implementation

Figure 8.4 identifies all the anticipated capital projects that will be needed to accomplish the goals of the Accessibility Plan within Priority 1 and 2 corridors. The implementation plan includes a list of the projects to accompany figure 8.4 and further defines the proposed projects, indicates the anticipated need for a project identified by community involvement, and shows the estimated cost.

The planning level estimates provided for each project are based on typical construction costs for the type of project in 2016 dollars. For projects with specific designs identified in adopted plans, the costs are those identified within the adopted plan. All costs will be refined by the City when more specific design details are available and the project is included within an adopted CIP.



City of Milwaukie Priority Corridors

ADA Accessible Routes

- Priority 1 - Required
- Greenway
- Multi-Use Path/Trail
- - - Priority 1 - Recommended
- - - Greenway
- - - Multi-Use Path/Trail
- Priority 2 - Required
- - - Priority 2 - Recommended
- - - Other Agency Jurisdiction

Essential Facilities

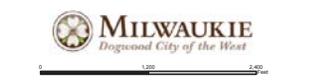
- Priority 1
- Priority 2
- Priority 2 Large Complex

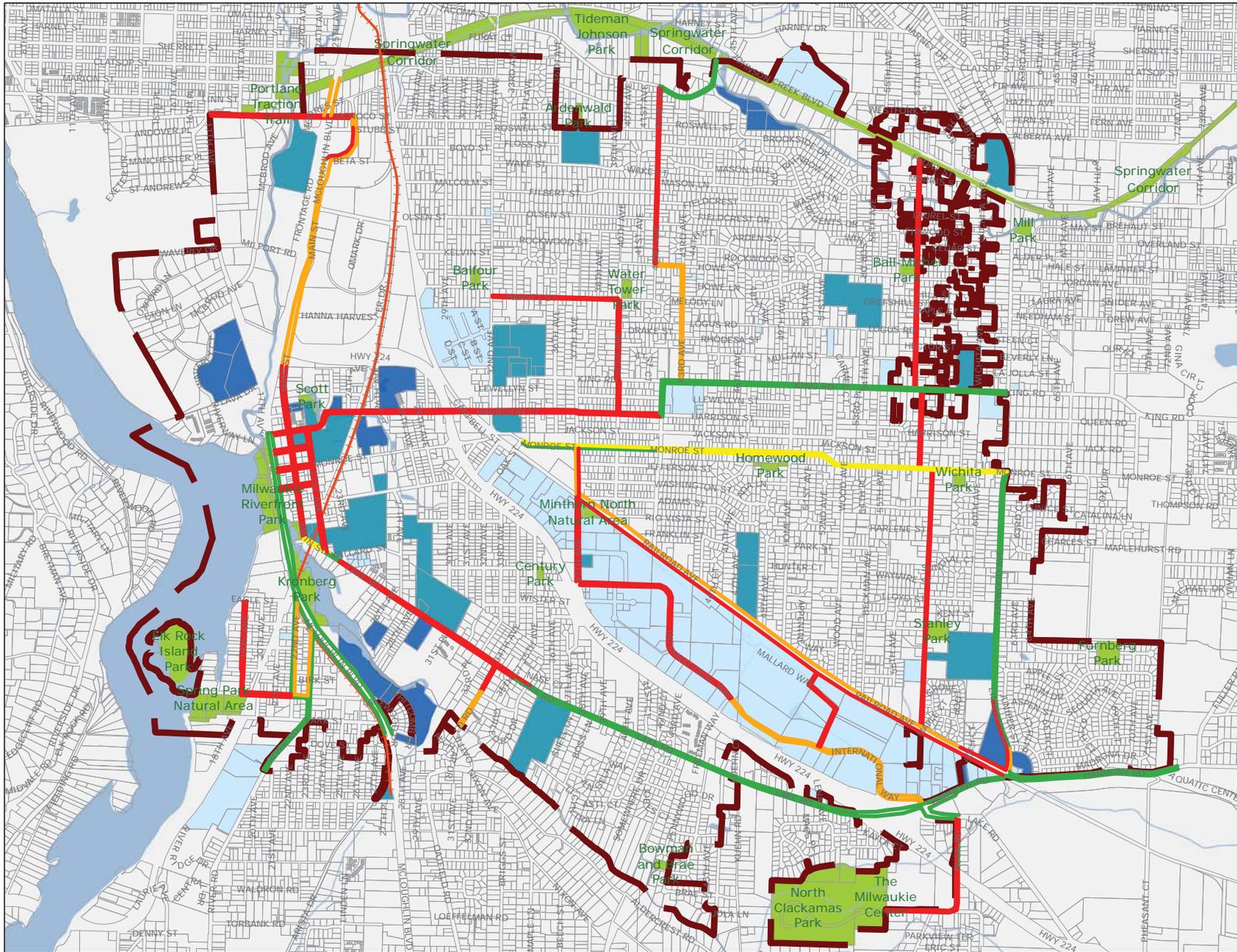
City of Milwaukie

- City Border
- - - Milwaukie Light Rail
- Milwaukie Parks

Figure 8.1

Data Source: City of Milwaukie GIS, Open Data Network or Center
 The information depicted on this map is the 2022/23 Reference only. The City of Milwaukie cannot warrant any responsibility for errors, omissions, or outdated information. Users who are operators, engineers or other professionals should consult with the City of Milwaukie for more information and/or clarification.
 Project: 2022-23 GIS
 Date: 10/20/23
 City of Milwaukie
 1200
 2400





City of Milwaukie Bicycle Facilities

Bicycle Inventory

- Dedicated Lane
- Sharrow
- Shoulder
- None

Essential Facilities

- Priority 1
- Priority 2
- Priority 2 Large Complex

City of Milwaukie

- City Border
- Milwaukie Light Rail
- Milwaukie Parks

Figure 8.3

Data Source: City of Milwaukie GIS, Street Data Provided by Center for Urban and Regional Analysis, Inc. The information depicted on this map is the 2020 Census data. The City of Milwaukie cannot be held responsible for errors, omissions, or any other inaccuracies. There are no warranties or representations made by the City of Milwaukie regarding the accuracy of the information depicted on this map.



ID #	Phase	Project Name	From	To	Description	Priority	Cost
AA	High	ADA Ramp Upgrades	City Wide	City Wide	Replace or add new ramps to comply with ADA standards.	1	\$150,636
AB	High	Remove Barriers Program	City Wide	City Wide	Remove or accommodate barriers by modifying sidewalk for ADA compliance.	1	\$1,404,920
AC	High	Railroad Ave Path	37th Ave	Linwood Ave	Add multi-use path on north side of Railroad.	1	\$4,800,000
AD	High	Kronberg Park Trail	Kellogg Creek Bike/Ped Bridge	River Rd	Construct multiuse path to connect bike/ped bridge to safe crossing of HWY 99E	1	\$1,800,000
AE	High	Stanley Neighborhood Greenway (North)	Johnson Creek Blvd	King Rd	Fill in sidewalk gaps on both sides of street, designate as a "neighborhood greenway" and install traffic-calming improvements.	1	\$1,900,000
AG	High	Linwood Ave	Harmony Rd	Monroe St	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk.	1	\$708,235
AH	High	43rd Ave/Howe/Covell	42nd Ave	King Rd	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, remove barriers. (Howe St, Covell St)	1	\$594,012
BQ	High	Monroe St Neighborhood Greenway	Oak St	Linwood Ave	Designate as a "neighborhood greenway" and install traffic-calming improvements.	1	\$6,763,417
AL	High	Sellwood St - Madison St	35th Ave	Milwaukie Elementary School	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, remove barriers. (Sellwood St, 30th Ave, Madison St)	1	\$369,766
AM	High	Edison St	HWY 224	35th Ave	Fill in sidewalk gaps on both sides of street.	1	\$59,998
AQ	High	Main St - Ochoco St	Harrison St	Mcloughlin Blvd	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, and remove barriers.	2	\$595,870
AR	High	International Way	Freeman Way	Lake Rd	Fill in sidewalk gaps on both sides of street, remove barriers.	2	\$416,113
AS	High	Oatfield Rd	Lake Rd	City Limits	Fill in sidewalk gaps on both sides of street, remove barriers.	2	\$154,130
AT	High	26th Ave	Lake Rd	Lake Village Apartments	Fill in sidewalk gaps on both sides of street.	2	\$62,224

Table 8-1

Accessibility Plan

Capital Projects

ID #	Phase	Project Name	From	To	Description	Priority	Cost
AU	High	22nd Ave	Mcloughlin Blvd	Sparrow St	Fill sidewalk gaps on both sides of street.	2	\$228,051
AV	High	Harvey St	32nd Ave	42nd Ave	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, and remove barriers.	2	\$365,691
BB	High	Home Ave	King Rd	Railroad Ave	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, remove barriers.	1	\$690,784
AI	Medium	Rusk Rd - Kellogg Creek Dr	Lake Rd	North Clackamas Park	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, remove barriers. (Lake Rd, Rusk Rd, Kellogg Creek Dr).	1	\$306,242
AJ	Medium	49th Ave	King Rd	Logus Rd	Fill in sidewalk gaps on both side of street and remove barriers.	1	\$133,671
AK	Medium	Washington St/35th Ave	Mcloughlin Blvd	Edison St	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, remove barriers.	1	\$152,829
AN	Medium	Sparrow St	22nd Ave	Trolley Trail	Add sidewalk, add pedestrian and bike crossing between River Rd and 25th Ave.	1	\$96,442
AO	Medium	Brookside Dr - Winsor Dr	Johnson Creek Blvd	Willow St	Fill in sidewalk gaps on both sides of street, remove barriers. (Brookside Dr, Regents Dr, Winsor Dr)	1	\$706,907
AP	Medium	Ochoco St	Mcloughlin Blvd	17th Ave	Fill in sidewalk gaps on both sides of street, remove barriers, replace portions of existing sidewalk.	1	\$212,546
AW	Medium	Lake Road	21st Ave	Guilford Dr	Widen road, add new sidewalks, and fill in gaps in existing bicycle network with bike lanes.	1	\$8,100,000
AX	Medium	Stanley Neighborhood Greenway (South)	King Rd	Railroad Ave	Fill in sidewalk gaps on both sides of street, designate as a "neighborhood greenway" and install traffic-calming improvements.	1	\$2,800,000
AY	Medium	Aspen - Furnberg St	Linwood Ave	Furnberg Park	Fill in sidewalk gaps on both sides of street. (Aspen St, Sequoia Ave, Redwood Ave, Plum Dr, 70th Ave, Furnberg St.)	1	\$550,058
AZ	Medium	Ardenwald Elementary School Routes	Roswell St	Olsen St	Fill in sidewalk gaps. (36th Ave, 39th Ave, Wake St, Ardenwald Path)	1	\$271,510
BA	Medium	Balfour St	32nd Ave	Balfour Park	Add sidewalk.	1	\$34,992

ID #	Phase	Project Name	From	To	Description	Priority	Cost
BC	Medium	Logus Rd	43rd Ave	49th Ave	Fill in sidewalk gaps, replace portions of existing sidewalk, remove barriers.	1	\$240,417
BD	Medium	Park St - Lloyd St	Home Ave	Stanley Ave	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, remove barriers. (Park St, Beckman Ave, Beckman Terrace, 56th Ave, Lloyd St)	1	\$546,915
BE	Medium	Where Else Ln	Lake Rd	Bowman and Brae Park	Fill in sidewalk gaps on both sides of street, remove barriers.	1	\$218,373
BF	Medium	Frontage Rd	Springwater Corridor	End of OLCC Building	Fill in sidewalk gaps on both sides, replace portions of existing sidewalk.	1	\$80,402
BG	Medium	28th Ave - Van Water St	Springwater Corridor	32nd Ave	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk.	1	\$209,980
BH	Medium	Rockwood St - Willow St	43rd Ave	Stanley Ave	Fill in sidewalk gaps on both sides of street, pave willow path, remove barriers.	1	\$406,311
BI	Medium	Mason Ln	42nd Ave	Regents Dr	Add new sidewalk.	1	\$455,125
BJ	Medium	Harmony Rd	International Way	Linwood Ave	Fill in sidewalk gaps on both sides of street, remove barriers.	1	\$106,459
BK	Medium	Harmony Rd	Linwood Ave	City Limits	Fill in sidewalk gaps, remove barriers, replace portions of existing sidewalk.	1	\$192,223
BL	Medium	Lava Dr - Waverly Ct	17th Ave	Highlands Apartments Entrance	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk.	2	\$119,737
BM	Medium	Mallard Way	International Way	Mallard Bridge	Add sidewalk.	2	\$124,029
BN	Medium	Bowman St - Brae St	Bowman and Brae Park	North Clackamas Park	Fill sidewalk gaps on both sides of street.	2	\$196,499
BO	Medium	River Rd	Mcloughlin Blvd	City Limits	Add sidewalk.	1	\$370,403
BP	Medium	Johnson Creek Blvd	Public Works Property	City Limits (East)	Fill sidewalk gaps on north side of street.	1	\$36,080

Table 8-1

Accessibility Plan

Capital Projects

ID #	Phase	Project Name	From	To	Description	Priority	Cost
BV	Medium	Lake Rd	Where Else Ln	International Way	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, and remove barriers.	1	\$467,501
CD	Medium	51st Ave	Logus Rd	Winworth Ct	Add new sidewalk.	1	\$106,011
CI	Medium	Mallard Bridge	Mallard Way	Railroad Ave	Establish a dedicated bicycle and pedestrian connection across Railroad Ave and the railroad tracks.	2	\$2,200,000
AF	Low	32nd Ave & Railroad Ave	Van Water St	Oak St	Replace portions of existing sidewalk and remove barriers.	1	\$748,249
BR	Low	19th/Sparrow Neighborhood Greenway	Eagle St	22nd Ave	Designate as a "neighborhood greenway" and create a woonerf by implementing traffic-calming measures and adding pedestrian and bicycle facilities.	1	\$2,129,000
BS	Low	47th Ave	Franklin St	Railroad Ave	Fill in sidewalk gaps on both sides of street.	1	\$63,192
BT	Low	23rd & Willard	Lake Rd	27th Ave	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, and remove barriers.	1	\$90,495
BU	Low	27th Ave	Lake Rd	Washington St	Replace portions of existing sidewalk and remove barriers.	1	\$218,079
BW	Low	Olsen St	42nd Ave	32nd Ave	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, and remove barriers.	1	\$305,948
BX	Low	Olsen St	32nd Ave	End of West Olsen St	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk.	1	\$229,596
BY	Low	Roswell St	32nd Ave	Rockworst St	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, and remove barriers.	1	\$225,489
BZ	Low	42nd Ave	Johnson Creek Blvd	Harvey St	Replace portions of existing sidewalk and remove barriers.	1	\$164,003
CA	Low	42nd Ave	Harrison St	Railroad Ave	Replace portions of existing sidewalk and remove barriers.	1	\$309,675
CB	Low	37th Ave	Harrison St	International Way	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, and remove barriers.	1	\$211,993

Table 8-1

Accessibility Plan

Capital Projects

ID #	Phase	Project Name	From	To	Description	Priority	Cost
CC	Low	King Rd	40th Ave	Linwood Ave	Fill in sidewalk gaps on both sides of street, replace portions of existing sidewalk, and remove barriers.	1	\$815,873
CE	Low	35th Ave	Washington St	Edison St	Replace portions of existing sidewalk, remove barriers.	1	\$110,950
CF	Low	28th Ave	Washington St	Harrison St	Replace portions of existing sidewalk, remove barriers.	1	\$160,281
CG	Low	Oak St	Washington St	Monroe St	Replace portions of existing sidewalk.	1	\$92,121
CH	Low	Mcloughlin Blvd	Washington St	River Rd	Fill in sidewalk gaps.	1	\$90,048
CJ	Low	51st Ave - Casa Del Rey St	Lake Rd	North Clackamas Park	Replace portions of existing sidewalk, remove barriers.	2	\$186,711
CK	Low	Monroe St	25th Ave	28th Ave	Replace portions of existing sidewalk, remove barriers.	1	\$71,102
CL	Low	Harrison	Mcloughlin Blvd	42nd Ave	Bicycle facility improvements.	1	\$310,000
CM	Low	Kellogg Creek Trail	Eagle St	Trolley Trail	Upgrade trail to ADA compliance.	1	TBD
CN	Low	International Way	37th Ave	Lake Rd	Bicycle facility improvements.	2	\$400,000
CO	Low	Oatfield Rd	Lake Rd	City Limits	Bicycle facility improvements.	2	\$380,000
CP	Low	Linwood Ave	Aspen St	Harmony Rd	Bicycle facility improvements.	1	\$320,000

9. Funding Plan

As per the implementing ordinances, all new revenues are dedicated exclusively to bicycle and pedestrian improvements. All new Program revenues will be accounted for in a fund dedicated exclusively to BPAP projects.

Dedicated bicycle and pedestrian funds are available to pay for both city forces and contracted services to construct, maintain or improve bicycle and pedestrian facilities (such as ADA ramp construction, rehabilitation and repair activities, construction of new bicycle and pedestrian facilities such as sidewalks and multi-use trails, and reconstruction projects); services in support of that mission (including engineering and inspection of work; regular condition inspections; and training and other services necessary to make the most efficient use of available funds); and additional costs involved in setting up revenue mechanisms such as additional programming necessary to allocate and track dedicated funds.

Currently the city utilizes the following funds for activities within the public right-of-way, including maintenance activities.

A. Street Fund

The Oregon State Gas Tax, which is assessed per gallon on motor vehicle fuel sold statewide, is the Street Fund's primary revenue source for flexible funding. The second source of flexible revenues for the Street Fund is franchise fees, collected from other City utilities (water, storm and wastewater).

While Street Fund revenues have remained largely flat, the cost of road construction and maintenance has increased substantially, particularly in recent years. The City has enjoyed success competing for grants for bicycle and pedestrian capital projects but such funds are dedicated to specific projects that are eligible to receive the grant. The majority of the projects identified within the proposed plan would not fare well or be eligible in the grant environment.

B. Residential Street Maintenance Fee

By Ordinance No. 1966, a street maintenance fee is fixed for single family residences and multi-family apartments. This fee is dedicated to the Street Surface Maintenance Program (SSMP).

C. Non-Residential Street Maintenance Fee

By Ordinance No. 1966, a non-residential street maintenance fee is calculated based on the number of square feet of building area (or alternative unit, such as gas pumps, or members) and a charge per thousand square feet. Each non-residential customer is assigned a category based on the type of business or organization. The fee is based on building size and the number of trips that such an operation typically generates, based on the widely used figures reported in the most recent edition of the International Traffic Engineers (ITE) manual Trip Generation.

The monthly non-residential fee is capped at \$296.88 per property, adjusted annually for inflation. Non-residential street maintenance fees are dedicated to the Street Surface Maintenance Program (SSMP).

D. PGE Privilege Tax

By Ordinance No. 1967, PGE began collecting the additional 1.5% Privilege Tax in July 2007. Privilege Tax revenues are included in PGE's annual franchise fee payment to the City, due prior to April 1 of the calendar year following collection. Revenues are dedicated to Street Surface Maintenance Program.

E. Local Gas Tax

City ordinance No. 1970 established a \$.02 per gallon tax on gasoline sold within the City. The Oregon Department of Transportation Fuels Tax Group collects the tax from local dealers on behalf of the City of Milwaukie. ODOT collects the additional tax from distributors making bulk deliveries of fuel to service stations and other wholesale customers of motor vehicle fuel in the City. Payments are made to the City on a quarterly basis with a reduction for ODOT administrative costs. Revenues are dedicated to Street Surface maintenance Program.

10. Action Plan

The BPAP is designed to extend the current SSMP program to include bicycle and pedestrian facilities and at the same time not take away revenues from that program. While any funds generated by this program would be kept separate from SSMP funds, it is intended that both programs would be administered together as part of a composite street utility program. Due to this and the similar nature of the two programs the BPAP was developed along the same guidelines as the SSMP.

A. Fee Determination

City Ordinance No. _____ establishes the Bicycle and Pedestrian Accessibility Program ("BPAP") and would allow the city to establish a utility fee to enhance, construct and reconstruct bicycle and pedestrian improvements throughout the City. The ordinance dedicates all revenues from these funds to bicycle and pedestrian improvements and those activities necessary to carry out the program, such as condition assessment and inspection.

Table 10.1. Fee Categories

Category	Typical customer	Unit	Trips Per Unit
1	Elem/Middle School; Lodge	students members	0.75 0.75
2	Heavy Industrial; High School	k sq feet students	2.00 2.00
3	Manufacturing; Warehouse; Religious Institution	k sq feet	4.00
4	Light Industrial; Office PUD	k sq feet Dwelling Unit	8.00
5	Hospital; Business Park; Auto Care	k sq feet	16.00
6	Recreation Facility; Special Retail; Supermarket	k sq feet	32.00
7	Govt Office; Restaurant; Gas Station	k sq feet	64.00
8	Fast Food; Convenience Store; Bank	k sq feet	128.00
9	Multipurpose recreational facility	acres	200.00
10	Movie theater	screens	400.00
11	Single Family Residential	dwelling units	10.00
12	Apartment or condo	dwelling units	6.00
13	Retirement community	dwelling units	4.00
14	Long term care facility	dwelling units	2.00

k sq feet: one thousand square feet of building area

B. Review Process

Trip category assignments are made using the ITE standards. Customers are notified that if they believe their categorization overstates actual trip generation, they can request a review of their account. The Engineering Director will conduct the review, considering all relevant evidence presented by the customer related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Engineering Department leads the fee review process, with assistance from Planning and Community Development. The Engineering Director makes the final determination based on the evidence provided.

Any customer that is not satisfied with the fee review outcome may appeal the categorization to Council, as provided for in the ordinance.

C. Fee Billing

The Finance Department is responsible for including the bicycle and pedestrian fee within the City utility billing system. It is included as a line item on each City utility bill, calculated based on building square feet and a per square foot charge (based on the category structure described above) or according to the residential category. The fee will be determined by Resolution of the City Council.

D. Low Income Exemption

The BPAP includes a complete exemption from the street maintenance fee for those households qualifying for the previously established "Low Income Utility Program".

E. Annual Reporting

The Engineering Director provides an annual report to City Council. The report includes a narrative description of the overall condition of the pedestrian and bicycle network, findings from new condition assessments, a detailed project schedule for the upcoming year, an updated 5-year project schedule, the project selection criteria, and a report on the previous year's projects, projects underway, and the overall program's progress. The Engineering Director is required to update Council on the feasibility of the program given trends in revenues and costs. A summary of the report to Council will be distributed to the community.

Appendix A

DRAFT

Appendix B

DRAFT



Memorandum

To: Mayor and City Council

Through: Bill Monahan, City Manager

From: Charles Eaton, Engineering Director

Date: July 12, 2016

Re: Bicycle and Pedestrian Prioritization Survey

The City has presented the Bicycle and Pedestrian Accessibility Plan and solicited input from citizens through the Neighborhood District Associations and Farmers Market. With all meetings complete, we have received 150 responses with the following results:

Bicycle and Pedestrian Needs. What is Your Priority?											
	Lewelling	Lake	Linwood	Historic Milwaukie	Hector Campbell	Island Station	Ardenwald	Farmers Market	TOTAL	%	
Remove Barriers	–	3	–	2	–	1	2	3	11	7%	
Repair Existing	–	–	–	3	–	–	–	8	11	7%	
Add New	5	3	12	4	7	6	8	41	86	57%	
ADA Compliance	–	1	–	5	2	–	–	2	10	7%	
Bicycle Connectivity	–	1	–	2	–	2	1	26	32	21%	
TOTALS	5	8	12	16	9	9	11	80	150		

In addition, we received the following comments:

1. Should be easy access between Tacoma Travel Center to hospitals and/or shopping at Marketplace or 42nd.
2. Please look to break Stanley Ave project to a management that focuses and prioritizes 'safe routes' to Linwood listed on TSP report. I'm afraid the total cost of project from Railroad to J.C. will 'scare away' commitment and funding.
3. Love to see sidewalk – River Rd. and side streets. Bicyclists to stay in bicycle lanes, not force cars driving by to go into oncoming lane of traffic.
4. I would love to see Kronberg Path to be opened so my commute to work would be less hindered by riding my bike along 99E (McLoughlin Blvd).

5. Please look at only the section of Stanley between Railroad and Monroe instead of looking at the total cost of Stanley.
6. Please prioritize the Stanley Ave Greenway Plan, so Stanley Ave between Railroad and Monroe could get accomplished.
7. If you could please prioritize by the non-bus serviced areas to schools within a mile from the school.
8. If Monroe St Greenway goes up Washington St, complete sidewalk on at least one side of street.
9. I marked adding more sidewalk on the chart – it's what I would most like to see happen. However, I think any significant addition of sidewalks would be cost prohibitive. My second choice is to remove barriers and add ramps.
10. Safe routes to schools are most important. Ped and bike connections between neighborhoods can be improved.
11. Please consider bike/ped new constructed path access connection at Sparrow right of way connecting Spring Park (whole neighborhood to Trolley Trail) safety across River Rd.
12. Please fund first the low hanging fruit first - not the expensive Greenways. Prioritize routes to school and routes to school buses – especially River Rd and 22nd in Island Station – since our kids go to school south of Milwaukie in Oak Grove.
13. Consider building path on Sparrow right-of-way from River Road to Trolley Trail.
14. Would really like to see connectivity between 4 of NDA's & downtown. 224 is a huge barrier for disabled & families with small children.
15. I would also like a tree planting program to be included in the plan for new sidewalks. Harvey Street is dangerous and needs sidewalks to 32nd Ave and to the Water Tower Park. That pocket of Ardenwald is populated by many elderly people and young children. Existing spaces with sidewalks also need to be more aesthetically pleasant to encourage walking. Planting trees on Harrison Street which connects Milwaukie to downtown Milwaukie would make a huge difference. I live on 37th and King and would like to walk with my three year old to the library, but I rarely do because it's so unpleasant and dangerous. Downtown Milwaukie is currently an island between two freeways. It would dramatically change the character of Milwaukie to plant these areas with trees and install planted medians and clear walkways to slow traffic.
16. 224 is a dangerous, unattractive, and unpleasant barrier to get from Ardenwald to neighborhood. Slowing the traffic way down would be great.

Bicycle & Pedestrian Needs

What is Your Priority?

<p>Remove Sidewalk Barriers</p>		<ul style="list-style-type: none"> ▪ Relocating or accommodating mailboxes. ▪ Fixing non-compliant driveways. ▪ Relocating or accommodating poles. 	
<p>Replace Existing Sidewalk</p>		<ul style="list-style-type: none"> ▪ Make existing sidewalk ADA accessible. ▪ Bring existing sidewalk into current standards. ▪ Replace damaged sidewalk. 	
<p>Add New Sidewalk</p>		<ul style="list-style-type: none"> ▪ Increase connectivity between existing sidewalks. ▪ Safe Routes to Schools. ▪ Safely reach important facilities. 	
<p>Add or Replace Ramps</p>		<ul style="list-style-type: none"> ▪ Make existing sidewalk ADA accessible. ▪ Upgrade existing noncompliant ramps. ▪ Allows use of existing facilities. 	
<p>Bicycle Facilities</p>		<ul style="list-style-type: none"> ▪ Provide missing connections between bicycle facilities. ▪ Improve safety of cyclists. ▪ Increase or upgrade bicycle facilities. 	



Pedestrian Needs

Street	From	To	Top Priority	#1 Priority	#2 Priority	#3 Priority	Weighted Priority
32nd Ave	Roswell St	Harrison St		4	1	3	17
35th Ave	Lake Rd	Edison St					0
40th Ave - King Rd	Harvey St	43rd Ave				1	1
42nd Ave	Roswell St	Harvey St			1	1	3
Aspen St - Furnberg St	Linwood Ave	Furnberg Park					0
Balfour St	Balfour Park	32nd Ave					0
Downtown Milwaukie	Mcloughlin Blvd, Main St, 21st Ave	Harrison St, Jackson St, Monroe St, Jefferson St, Washington St	1		2		9
Garret Dr - 47th Ave	Monroe St	Railroad Ave					0
Harmony Rd	International Way	City Limit			1		2
Harrison St - King Rd	Mcloughlin Blvd	Linwood Ave	1				5
Kronberg Park Trail	Kellogg Creek Bridge	River Rd		2	1		8
Lake Rd	Main	International Way	2	2	2	5	25
Linwood Ave	Monroe St	Railroad Ave	2	3			19
Mcloughlin Blvd	Springwater Trail	End of OLCC Property					0
Monroe St	21st Ave	28th Ave				2	2
Railroad Ave - Monroe St	Harrison St	Linwood Ave	1	3	5	1	25
Roswell St	42nd Ave	Rockworst St				1	1
Stanley Ave	Johnson Creek Blvd	King Rd	1	1	2	1	13
Stanley Ave	Monroe St	Railroad Ave				1	1
Washington St - 27th Ave - Willard St	21st Ave	Lake Rd/23rd Ave & Lake Rd/27th Ave		1			3
Where Else Ln	Lake Rd	Bowman and Brae Park					0
37th Ave	Harrison St	International Way					0
Lake Rd - Kellogg Creek Dr	Lake Rd	North Clackamas Park			2	2	6
Ochoco St	Mcloughlin Blvd	17th Ave			1		2
19th Ave	Kellogg Creek Trail	Sparrow St	1				5
Johnson Creek Blvd	Eastern City Limit	West End of Public Works					0
Sparrow St	19th Ave	Trolley Trail		1	1		5
43rd Ave	Howe St/42nd Ave & Covell St/42nd Ave	King Rd		2	2		10
Railroad Ave	Linwood Ave	37th Ave	2	5	2	2	31
River Rd	Mcloughlin Blvd	Sparrow St				1	1
28th Ave	Harrison St	Washington St			1		2
42nd Ave	Harrison St	Railroad Ave			1		2
Ardenwald Elementary	Roswell St/36th Ave	Roswell St/39th Ave				1	1
Brookside Dr - Winsor Dr	Johnson Creek Blvd	Willow St			1	2	4
Johnson Creek Blvd - 42nd Ave	Springwater Corridor	Roswell St			1	1	3
Howe St	43rd Ave	42nd Ave					0
Mcloughlin Blvd	Washington St	City Limit					0
Oak St	Washington St	Railroad Ave/Monroe St		1	3	3	12
Olsen St	West End of Olsen St	42nd Ave		1			3
Park St - Lloyd St	Home Ave	Stanley Ave		1			3

Pedestrian Needs

Street	From	To	Top Priority	#1 Priority	#2 Priority	#3 Priority	Weighted Priority
Rockwood St - 51st Ave	43rd Ave	Winsor Dr			1	1	3
Sellwood St - Madison St	35th Ave	Milwaukie Elementary School		3	1	1	12
Stanley Ave	King Rd	Monroe St		2		1	7
Van Water St - 32nd Ave	Springwater Trail	Roswell St			1		2
Washington St - 35th Ave	28th Ave	Edison St		1		1	4
Waverly Ct - Lava Dr	The Highlands Entrance	17th Ave				2	2
49th Ave	Logus Rd	King Rd					0
Edison St	35th Ave	37th Ave	1	4		1	18
Home Ave	King Rd	Railroad Ave			3		6
Mason Ln	42nd Ave	Regents Dr				1	1
International Way	37th Ave	Lake Rd		1	2	1	8
River Rd	Sparrow St	City Limit					0
Main St	Harrison St	Ochoco St	2	7	3	2	39
26th Ave	Lake Rd	Lake Village Apartments			3	5	11
Ochoco St	Main St	Mcloughlin Blvd		1	2	2	9
Mallard Way	International Way	Railroad Ave					0
Bowman St - Kuehn Rd	Bowman and Brae Park	North Clackamas Park		1	1	1	6
51st Ave - Casa Del Rey Dr	Lake Rd	North Clackamas Park			1	1	3
Harvey St	32nd Ave	42nd Ave		3	5	6	25
Oatfield Rd	Guilford Ct	City Limit		2		1	7
22nd Ave	Mcloughlin Blvd	Sparrow St		2	1		8

Bicycle Facilities

Street	From	To	Top Priority	#1 Priority	#2 Priority	#3 Priority	Weighted Priority
Lake Rd	Main St	Guilford Dr.	2	5	4	2	35
Monroe St	21st Ave	28th Ave			1		2
Monroe St	Oak St	Linwood Ave	1	3		5	19
19th Ave/Sparrow St	Eagle St	River Rd					0
Harrison St	Mcloughlin Blvd	21st Ave		1		1	4
International Way	37th Ave	Lake Rd			3		6
Oatfield Rd	Guilford Ct	Lake Rd		2	2	1	11
Harrison St	HWY 224	42nd Ave	1	2	4		19
Linwood Ave	Apen St	Harmony Rd					0
Stanely Ave	Railroad Ave	Johnson Creek Blvd		1	2	4	11
Railroad Ave	37th Ave	Linwood Ave		3	1	3	14



CITY OF MILWAUKIE
"Dogwood City of the West"

Ordinance No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.26 – BICYCLE AND PEDESTRIAN ACCESSIBILITY PROGRAM, ADOPTING A BICYCLE AND PEDESTRIAN ACCESSIBILITY PROGRAM AND ALLOWING PAYMENT OF A STREET MAINTENANCE FEE DEDICATED TO BICYCLE AND PEDESTRIAN IMPROVEMENTS.

WHEREAS, the purchasing power of revenue received by the City as its share of state gas tax revenues has been decreasing; and

WHEREAS, revenue from other sources, combined with the City’s share of gas tax revenues, has been insufficient to allow the City to both develop new pedestrian and bicycle infrastructure as needed and maintain existing bicycle and pedestrian infrastructure; and

WHEREAS, the American with Disabilities Act requires a program to make facilities accessible; and

WHEREAS, the City has prepared a Bicycle and Pedestrian Accessibility Program; and

WHEREAS, the City needs additional revenue streams to properly construct and maintain its bicycle and pedestrian system on a timely basis; and

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. The Milwaukie municipal Code is amended by adding a new Chapter 3.26 – Bicycle and Pedestrian Accessibility Program, to read as shown in Exhibit A.

Section 2. This ordinance shall take effect 30 days after passage

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

CHAPTER 3.26

BICYCLE AND PEDESTRIAN ACCESSIBILITY PROGRAM

3.26.010 DEFINITIONS

As used in this chapter follows 3.25.010, unless the context requires otherwise:

3.26.020 ADMINISTRATIVE OFFICERS

- A. Except as provided in subsections C of this section, the Engineering Director shall be responsible for the administration of this chapter. The Engineering Director shall be responsible for developing administrative procedures for the chapter, and consideration and assignment of categories of use subject to appeal to the City Council.
- B. The Engineering Director shall be responsible for implementation and enforcement of steps to minimize utility cut damage to streets, including a five (5)-year moratorium on capital projects on recently reconstructed, rehabilitated, or newly built City streets. The Public Works Operations Director is responsible for City compliance with street cut repair policy.
- C. The Finance Director shall be responsible for the administration and collection of fees under this chapter.

3.26.030 DEDICATION OF REVENUES

- A. All funds and all proceeds from funds collected pursuant to this chapter shall be used for the bicycle and pedestrian accessibility program.

3.26.040 ANNUAL BICYCLE AND PEDESTRIAN ACCESSIBILITY PROGRAM REPORT

- A. Each spring the Engineering Director shall prepare and present to Council the Annual Street Surface Maintenance Program Report.
- B. The report shall include a narrative description of the overall condition of the street network, the findings of any new condition assessments, a detailed project schedule for the upcoming year, an updated five (5) year project schedule, the project selection criteria employed, and a report on the previous year projects, workload impacts, and overall program progress. The report shall include revenues received relative to revenue projections, project cost inflation trends, and any other new developments that impact the adequacy of the program funds to meet program goals.

3.26.050 STREET MAINTENANCE FEE

- A. A street maintenance fee is imposed and levied upon the responsible party for all developed property within the City. The fee shall be based on the direct and indirect use of or benefit derived from the use of public streets generated by the developed property, to be calculated as described in Section 3.26.060.
- B. The street maintenance fee is also imposed and levied on the property owner of the developed property in the event of nonpayment by the responsible party.

3.26.060 DETERMINATION OF STREET MAINTENANCE FEE

- A. Category Assignment

Each developed property in the City shall be assigned to a category of use according to the land use type listed in subsection C of this section.

Proposed Code Amendment

1. Upon request of the customer, the Engineering Director shall review the category of use assignment. The Engineering Director shall consider evidence provided by the customer that relates to the actual trip generation patterns of the property in question. The determination of category of use shall not be considered a land use decision as that term is defined in ORS 197.015.

B. Fee Calculation

The bicycle and pedestrian fee shall be calculated by multiplying the number of units (listed in subsection C) by the trip rate per unit for that assigned category of use and then by the monthly per trip charge determined by resolution of the City Council, to establish the monthly fee to be billed.

1. Fee Maximum

The maximum monthly bicycle and pedestrian fee for nonresidential accounts shall be two hundred and fifty dollars (\$296.88) per property. The maximum shall be adjusted for inflation annually according to the Consumer Price Index published by the Bureau of Labor Statistics. The adjustment for inflation shall be included in the annual fee schedule update beginning in 2017.

2. Fee Minimum

The minimum monthly bicycle and pedestrian fee shall be equal to single family residential.

C. Category of Use

1. Category 1 shall be estimated at 0.75 trips per unit. Land uses include elementary and middle schools, private schools (K12), and lodge/fraternal organizations (ITE Codes 520, 521, 522 and 591).
2. Category 2 shall be estimated at two (2) trips per unit. Land uses include general heavy industrial, mini-warehouses, City parks, high schools, colleges, and furniture stores (ITE Codes 120, 151, 411, 530, 540, 550 and 890).
3. Category 3 shall be estimated at four (4) trips per unit. Land uses include manufacturing, warehouses, utilities, County parks, religious institutions, and nursing homes (ITE Codes 140, 150, 170, 412, 560, and 620).
4. Category 4 shall be estimated at eight (8) trips per unit. Land uses include general light industrial, industrial park, PUDs, motels, golf courses, general office, single-tenant office buildings, office parks, research and development centers, and drinking places (ITE Codes 110, 130, 270, 320, 430, 710, 715, 750, 760, and 836).
5. Category 5 shall be estimated at sixteen (16) trips per unit. Land uses are hotels, cemeteries, hospitals, business parks, wholesale nurseries, automobile care centers, self-service car washes, tire stores, discount clubs, and apparel stores (ITE Codes 310, 432, 566, 610, 770, 818, 840, 847, 848, 849, 861 and 870).
6. Category 6 shall be estimated at thirty-two (32) trips per unit. Land uses include marinas, tennis courts, racquet clubs, health clubs, bowling alleys, recreational community centers, day care, libraries, clinics, medical/dental office buildings, building materials and lumber, discount stores, specialty retail, hardware/paint stores, nursery/garden centers, shopping centers, high turnover sit-down restaurants, quick lubrication vehicle stops, new car sales, gas stations with convenience market, supermarkets, home improvement superstores, and electronics superstores (ITE

Codes 420, 491, 492, 493, 494, 495, 565, 590, 630, 720, 812, 813, 814, 815, 816, 817, 820, 832, 837, 841, 844A, 845, 850, 862 and 863).

7. Category 7 shall be estimated at sixty-four (64) trips per unit. Land uses include government office buildings, quality restaurants, and gas stations (ITE Codes 730, 831, 844, 846, and 854).
 8. Category 8 shall be estimated at one hundred twenty-eight (128) trips per unit. Land uses include U.S. Post Offices, fast food restaurants, convenience markets, and banks (ITE Codes 732, 833, 834, 851, 911, and 912).
 9. Category 9 shall be estimated at two hundred (200) trips per unit. Land use is a multipurpose recreational facility (ITE Code 435).
 10. Category 10 shall be estimated at four hundred forty (440) trips per unit. Land use is a movie theater (ITE Code 444).
 11. Category 11 shall be estimated at ten (10) trips per unit. Land use is single family residential (ITE Code 210).
 12. Category 12 shall be estimated at six (6) trips per unit. Land use is Multi-family residences, except for elderly housing, mobile home parks and congregate care (ITE Code 220, 221, 222, 230, 231, 232, and 260)
 13. Category 13 shall be estimated at four (4) trips per unit. Land use is Elderly housing and mobile home parks (ITE Code 240, 251, 252, and 255).
 14. Category 14 shall be estimated at two (2) trips per unit. Land use is congregate care facilities (ITE Code 253 and 254).
- D. Units. The unit used in calculating the nonresidential bicycle and pedestrian fee shall be one thousand (1,000) gross square feet of building area, with the following exceptions:

USE	UNIT
Parks, golf courses, cemeteries, marinas, multipurpose recreational facilities	One (1) acre
Schools and colleges	One (1) student
Lodges	One (1) member
Hotels and motels	One (1) room
Self-service car washes	One (1) wash stall
Tennis courts and racquet clubs	One (1) court
Quick lubrication vehicle stops and gas stations	One (1) fueling or service position
Movie theaters	One (1) screen
Assisted Living facilities	One (1) bed
Residential uses, except assisted living.	One (1) dwelling unit

E. Unlisted Uses

In the event that a property is occupied by a use that is not expressly listed in any of the above categories, the Engineering Director shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Engineering Director shall determine the trips per unit shall be based on a transportation study, the Trip Generation Manual, or any other method of determining trips. Any determination by the Engineering Director under this section may be reviewed under the procedure described in Section 3.26.100.B. The result of the review may be appealed to

the City Council by filing a notice of appeal within ten (10) days of the date notice of the result of the review is mailed to the property owner.

3.26.070 ADMINISTRATION OF BICYCLE AND PEDESTRAIN FEE

- A. Under the supervision of the Finance Director, the bicycle and pedestrian fee shall be billed and collected with and as part of the monthly water and sewer bill for those lots or parcels utilizing City water and sewer, as provided for in Section 13.04.100, and billed and collected separately for those developed properties not utilizing City water and sewer. In the event of nonpayment, the City may bill the property owner or take other action as authorized by law to collect from the responsible party.
- B. In the event funds received from City utility billings are inadequate to satisfy in full all of the water, sanitary sewer, storm sewer, and bicycle and pedestrian fees, credit shall be given to the bicycle and pedestrian fee, sanitary sewer service charges, storm sewer service charges, and water service charges proportionately.
- C. Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this chapter, including, but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

3.26.080 WAIVER OF BICYCLE AND PEDESTRAIN FEE IN CASE OF VACANCY

- A. When any property within the City becomes vacant and water service is discontinued, a waiver of the bicycle and pedestrian fee may be granted by the Finance Director upon written application of the person responsible, including a signed statement, affirming under penalty of perjury that the property is vacant, and upon payment of all outstanding water, sanitary sewer, storm sewer, and street maintenance charges.
- B. For purposes of this section, "vacant" means that an entire building or utility billing unit has become vacant or continuously unoccupied for at least thirty (30) days. "Vacant" shall not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.
- C. Fees shall be waived in accordance with this section only while the property remains vacant. The person responsible shall notify the City within five (5) days of the premises being occupied, partially occupied, or used, regardless of whether water service is restored.

3.26.090 RELIEF FOR LOW INCOME RESIDENTIAL CUSTOMERS FROM STREET MAINTENANCE FEE

The street maintenance fee shall not be billed to those households included in the low income utility program.

3.26.100 STREET MAINTENANCE FEE APPEAL PROCEDURE

- A. Any owner who disputes any interpretation given by the City as to the category of use assigned to such owner's property pursuant to this chapter may request a review and appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the Engineering Director for review and thereafter may be appealed to the City Council in accordance with this section. Failure to appeal an interpretation made under this chapter within the time and in the manner provided shall be sufficient cause to deny the relief requested. Except in cases of hardship as determined by the Council, disputes which result in changes in the street maintenance fee charged under this chapter shall become effective with the next billing cycle.

- B. A utility customer may request a review of the category of use assigned. The Engineering Director shall conduct the review, considering all relevant evidence presented by the customer related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Engineering Director shall make a determination based on the evidence provided and provide notice to the customer.
- C. An owner who disputes an interpretation made by the Engineering Director as to the assigned category of use under this chapter shall submit a written appeal to the City Manager within ten (10) days from the date of notice of the Engineering Director's determination under subsection B of this section, together with a filing fee in the amount determined by resolution. The application for appeal shall specify the reasons therefore and include an engineering study prepared by a licensed professional engineer in conformance with the methodology outlined in the ITE Manual. Appeals shall be limited to the issue of whether the appropriate category of use has been assigned to the property.
- D. The City Manager shall schedule the matter for City Council review and notify the appellant not less than ten (10) days prior to the date of such Council review. The Council shall conduct a hearing during a public meeting and determine whether there is substantial evidence in the record to support the interpretation given by the Engineering Director. The Council may continue the hearing for purposes of gathering additional information bearing on the issue. The Council shall make a tentative oral decision and shall adopt a final written decision together with appropriate findings in support. The decision of the Council with respect to the category of use shall be limited to whether the appellant has been assigned to the appropriate category of use. If the Council should determine that a different category of use should be assigned, it shall so order, provided no refund of prior street maintenance fees shall be given. Only where the Council decision results in a change in category of use will the filing fee on the appeal be refunded. The Council decision shall be final.

3.26.110 EXCEPTIONS TO STREET MAINTENANCE FEE

The following shall not be subject to the street maintenance fee:

- A. City-owned parking lots;
- B. Publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided;
- C. Areas encompassed by railroad and public rights-of-way, except for developed railroad property such as maintenance areas, nonrolling storage areas, and areas used for the transfer of rail-transported goods to nonrail transport, which areas shall be subject to street maintenance fees.

3.26.120 STREET MAINTENANCE PROJECT SELECTION

The Engineering Director and Public Works Operations Director shall annually update a five (5) year schedule of street maintenance projects and include that schedule in the City Capital Improvement Plan.

3.26.130 STREET MAINTENANCE PROJECT SCHEDULE AND NARRATIVE

The street maintenance project schedule shall include a narrative description of street conditions, the project selection criteria, and a history of projects completed as part of the Bicycle and pedestrian accessibility Program. The Street Maintenance Project Schedule and Narrative is a public record. The Street Maintenance Project Schedule and Narrative shall be prepared annually and presented to City Council as part of the Engineering Director's annual report on the program.

3.26.140 SEVERABILITY

In the event any section, subsection, paragraph, sentence, or phrase of this chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the chapter shall continue to be effective. If a court of competent jurisdiction determines that this ordinance imposes a tax or charge, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the street maintenance fee shall be created and the remainder of the ordinance and the fees imposed thereunder shall continue to apply to the remaining properties without interruption. Nothing contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. C.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council
Through: Bill Monahan, City Manager
Alma Flores, Community Development Director
Subject: **Riverfront Park Beach Repair**
From: Charles Eaton, Engineering Director
Date: July 8, 2016

ACTION REQUESTED

Authorize the City Manager or his designee to negotiate and execute a contract with the most qualified firm for design and construction management services for the Riverfront Park Beach Repair work.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

This work has been discussed with City Council during several work sessions relating to the damages incurred due to the storm event of December 6-23, 2015.

BACKGROUND

The beach area of Riverfront Park was severely damaged during the storm event of December 6-23, 2015. Staff submitted for FEMA designation on the beach damages in addition to the damages at the park bridge and the south bank of Kellogg Creek as part of the Clackamas County disaster declaration.

Staff met with FEMA on May 26, 2016 to come to an agreement on damages for each FEMA project. Based upon those damage determinations, staff prepared a Request for Proposals from engineering firms to restore the facility to pre disaster condition.

Staff solicited proposals, in accordance with 70.015 of the City of Milwaukie Public Contracting Rules, from interested firms to perform design and construction management services for the work identified in the damage determination agreements and received four proposals:

- OTAK, Inc.
- Environmental Science Associates (ESA)
- Henderson environmental design-build professionals
- PND Engineers, Inc (PND)

Staff has reviewed the proposals and selected Environmental Science Associates (ESA) as the most qualified firm based on the written materials and interviews.

Staff will request a cost proposal from the most qualified firm and negotiate a final scope of work and cost proposal. If agreement cannot be reached, the City will enter into negotiations with the next most qualified consultant until such time as an agreement is reached and a contract is executed in conformance with 70.015C.

FISCAL IMPACTS

This project is funded within the FY 16-18 budget. Additional funding allocation may be necessary once final costs are determined. FEMA will reimburse the City for 75% of the cost to repair the facility to pre disaster condition.

WORK LOAD IMPACTS

Project was scheduled during this time frame, no additional impacts are anticipated

ALTERNATIVES

Council could reject the proposals

ATTACHMENTS

1. Resolution



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR ENGINEERING SERVICES FOR THE RIVERFRONT PARK BEACH REPAIR.

WHEREAS, the Riverfront Park beach area was significantly damaged during the storm event of December 6-23, 2015; and

WHEREAS, FEMA has formally declared the event a disaster and has made funding available for the restoration of damages incurred during the event; and

WHEREAS, The engineering services for the design and construction management services are best contracted out for the identified project; and

WHEREAS, a formal competitive request for proposal process following Chapter 70.015 of the City's Public Contracting Rules and FEMA regulations was conducted; and

WHEREAS, Environmental Science Associates (ESA) is recommended as the most qualified firm for the project; and

Now, Therefore, be it Resolved that the City of Milwaukie authorizes the City Manager to negotiate and execute a contract for engineering services to the most qualified candidate in accordance with Chapter 70.015C of the City's Public Contracting Rules.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. D.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Adopt Art in Public Places Ordinance**

From: Mitch Nieman, Asst. to City Manager

Date: July 19, 2016

ACTION REQUESTED

Second reading and adoption of proposed Art in Public Places Ordinance adding Sections 20.06.010 through 20.06.080 to Chapter 20 of the Milwaukie Municipal Code (MMC).

HISTORY OF PRIOR ACTIONS AND DISCUSSION

July 5, 2016: Council heard the first reading of the subject ordinance and agreed to amend it to add the following language to Section 20.06.030(E): *or any project financed by a publically approved bond measure prior to July 1, 2016.*

June 23, 2016: Staff sent an e-mail to Council to explain the City of Portland's "Floor Area Ratio (FAR) Program," which if administered by way of a public art ordinance in Milwaukie, would need to be done with an amendment to the city's development code through the land use process.

June 21, 2016: Members of the Arts Committee met with City Council to present a draft Art in Public Places ordinance that focused exclusively on integrating art into public capital and development projects. Also, the City of Portland's FAR program was discussed.

April 19, 2016: Members of the Arts Committee met with City Council to present their annual strategic plan and introduce a concept Art in Public Places ordinance. The concept ordinance attached a dedication requirement to private and public development.

FISCAL IMPACTS

There is no cost to the City to adopt an art in public places ordinance.

ALTERNATIVES

1. Adopt proposed Art in Public Places Ordinance
2. Do not adopt proposed Art in Public Places Ordinance and direct staff to bring forward a new or amended ordinance for consideration of adoption at a future date

ATTACHMENTS

1. Art in Public Places ordinance



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 20.06 ADOPTING AN ART IN PUBLIC PLACES PROGRAM.

WHEREAS, Artistic and cultural resources are essential to the quality of life of a community. Art in Public Places contributes to the economic vitality of a region by improving the quality of the built environment and fostering a positive community identity; and

WHEREAS, Historically, artists have helped shape great civic projects, from federal monuments to community development projects of local government agencies and special districts; and

WHEREAS, Art in Public Places for the City of Milwaukie integrates art into public capital improvement projects and development projects, which enhances Milwaukie's visual environment for those who live here now and for generations to come; and

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 20.06 Art in Public Places Program, to read as shown on the attached Exhibit A.

Section 2. This ordinance shall take effect 30 days after passage.

Read the first time on July 5, 2016, amended, and moved to second reading by unanimous vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Exhibit A

Sections:

- 20.06.010 Title.
- 20.06.020 Purpose.
- 20.06.030 Definitions.
- 20.06.040 Dedication of 1.5% to Art in Public Places.
- 20.06.050 Art in Public Places Fund.
- 20.06.060 Siting of Art in Public Places Artwork.
- 20.06.070 Program Guidelines.
- 20.06.080 Ownership.

20.06.010 Title.

This Chapter shall be known as the "Art in Public Places" program of the City of Milwaukee.

20.06.020 Purpose.

Artistic and cultural resources are essential to the quality of life of a community. Art in Public Places contributes to the economic vitality of a region by improving the quality of the built environment and fostering a positive community identity. Historically, artists have helped shape great civic projects, from federal monuments to community development projects of local government agencies and special districts. Art in Public Places for the City of Milwaukee integrates art into public capital improvement projects and development projects, which enhances Milwaukee's visual environment for those who live here now and for generations to come.

20.06.030 Definitions.

"Art in Public Places" means the program established by this ordinance to set aside a percentage of the total cost of City projects for Art in Public Places Artwork.

"Art in Public Places Fund" means a City fund or account into which all moneys derived pursuant to this Chapter shall be deposited. Monetary contributions for Art in Public Places shall also be deposited into the Art in Public Places Fund. Funds within the Art in Public Places Fund shall be solely be utilized for the purposes outline in this Chapter.

"Artwork" means all forms of original works of art accessible to the public and/or public employees including:

- A. Painting of all media, including both portable and permanently fixed works, such as murals;

B. Sculpture which may be in the round, bas-relief, high-relief, mobile, fountain, kinetic, electronic and others, in any material or combination of materials;

C. Other visual media including, but not limited to, prints, drawings, stained glass, calligraphy, glass works, mosaics, photography, film, clay, fiber/textiles, wood, metals, plastics or other materials or combination of materials, or crafts or artifacts.

D. Works of a wide range of materials, disciplines and media which are of specific duration, including performance events, and which are documented for public accessibility after the life of the piece has ended.

E. Art works that possess functional as well as aesthetic qualities.

“City Project” means any capital or development project in an amount over \$50,000 paid for wholly or in part by the City of Milwaukie to construct, rehabilitate, remodel or purchase for a public use any building, decorative or commemorative structure, park, parking facility or any portion thereof within the limits of the City of Milwaukie. “City project” does not include street, pathway or utility construction; emergency work; minor alterations; ordinary repair or maintenance necessary to preserve a facility; or service facilities not normally visited by the public, such as maintenance sheds or storage buildings, *or any project financed by a publically approved bond measure prior to July 1, 2016.*

“Deaccessioning” means relinquishing title to a work of Art in Public Places.

“Eligible Funds” means a source of funds for projects from which art is not precluded as an object of expenditure.

“Selection Committee” means the committee established by City Staff and the Milwaukie Arts Committee for each project. The Selection Committee is solely responsible for artist selection, review of design, execution, placement and acceptance of Art in Public Places Artwork, and shall communicate such progress to City Council.

“Total Cost” means the entire amount of the City’s contribution toward the construction or purchase of a City project. “Total cost” does not include costs for design and engineering, administration, fees and permits, building demolition, relocation of tenants, contingency funds, change order costs, environmental testing or indirect costs, such as interest during construction, advertising and legal fees. When a City project involves the purchase of real property, costs attributable to land acquisition are not included in total cost, while costs attributable to improvements on the real property that are acquired for public use are included in the total cost.

20.06.040 Dedication of 1.5% to Art in Public Places.

A. Dedication: One and one half percent (1.5%) of the Total Cost of a qualifying City Project shall be set aside for the acquisition of Art in Public Places Artwork. Artwork shall be sited in accordance with Section 20.06.060.

B. Restricted funds: If funding for a particular City Project is subject to legal restrictions that preclude Art in Public Places as an object for expenditure, the portion of the City Project that is funded with the restricted funds shall be exempt from the requirements of this Chapter.

C. Phased projects: As a general rule, where a City Project will be constructed in phases, the 1.5% dedication shall be applied to the estimated total cost of each phase of the Project at the time that funds for the phase are appropriated and encumbered. Nothing in this section prevents the Council from deciding to set aside all or part of the entire dedication from the funds of a particular phase, however, as the Council deems appropriate. In determining when to set aside the funds for a phased project, the City shall encourage an overall public art plan for phased work to ensure that art is not located on a piecemeal basis.

20.06.050 Art in Public Places Fund.

There is hereby created a special City fund or account called the Art in Public Places Fund into which the monetary contributions for Art in Public Places shall be deposited.

A. 1.5% of the total cost of City Projects shall be dedicated to Art in Public Places. Such funds shall be deposited into the Art in Public Places Fund at the time that budgeted funds are encumbered for the construction or purchase price of the City Project.

1. 1% of the total cost of City Projects shall be used for costs associated with the acquisition of Art in Public Places Artwork including, but not limited to, the design, purchase and siting of Artwork.

2. 0.5% of the total cost of City Projects shall be used for costs associated with administration of the Art in Public Places Program, including, but not limited to, costs of selection, conservation and maintenance of the collection, community education, deaccessioning and registration of Art in Public Places Artwork.

B. Monetary contributions shall be deposited in separate accounts within the Art in Public Places Fund if separate accounting is deemed appropriate by the City Manager or is required by law.

C. Monetary contributions made other than through the Art in Public Places Program shall be deposited in the Art in Public Places Fund and may be dedicated to or earmarked for a specific program or piece of Artwork, subject to acceptance by the City Council.

D. Disbursements from the Art in Public Places Fund shall be made only after authorization of the City Manager or the Manager's designee, and shall be made according to this Chapter and any guidelines adopted hereunder.

20.06.060 Siting of Art in Public Places Artwork.

Art in Public Places Artwork selected pursuant to this Chapter may be sited in, on or about any City Project or other property owned, leased or rented by or to the City of Milwaukee. Art in Public Places Artwork may be attached or detached within or about such property, and may be either temporary or permanent.

20.06.070 Program Guidelines.

The City Council shall adopt guidelines for administration of the Percent for Art Program. Such guidelines shall:

- A. Provide for the appointment of representatives to the Selection Committee. The Selection Committee's membership shall include a Project architect, engineer, or project manager of given City Project; constituent representative (i.e., user of the facility being built or renovated); two representatives of the Milwaukee Arts Committee; two professional artists; one Community Development Department representative; one Neighborhood District Association representative from the respective neighborhood; one member of City Council.
- B. Provide for a method or methods of selecting and contracting with artists for the design, execution and siting of Art in Public Places Artwork.
- C. Determine the dedication and disbursement process for the Art in Public Places Fund.
- D. Clarify the responsibility for maintenance of Art in Public Places Artwork, including any extraordinary operations or maintenance costs associated with Art in Public Places Artwork, prior to selection.
- E. Facilitate the preservation of art objects, ethnic and cultural arts and crafts, and artifacts.
- F. Provide a process to deaccession Artwork.
- G. Set forth any other matter appropriate to the administration of this Chapter.
- H. Provide for annual reporting to City Council and the Milwaukee Arts Committee on the Art in Public Places Program progress.

20.06.080 Ownership.

All Art in Public Places Artwork acquired pursuant to this Chapter shall be acquired in the name of the City of Milwaukee, and title shall vest in the City of Milwaukee.



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. E.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council
From: Mitch Nieman, Asst. to City Manager
Through: Bill Monahan, City Manager

Subject: **Museum Lease**

Date: **July 19, 2016**

ACTION REQUESTED

Authorize the city manager to execute a ground lease with The Milwaukie Historical Society for ten years including two five-year options to renew. Members of the Historical Society have reviewed the lease and agree with its terms.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

May 17, 2016 – City Council approved a 60-day extension of existing lease to give staff time to prepare a new lease for consideration of execution at a future meeting.

April 5, 2016 – City Council approved a 60-day extension of existing lease to give staff time to prepare a new lease for consideration of execution at a future meeting.

March 15, 2016 – City Council directed staff to prepare an extension of existing lease for sixty (60) days to accommodate preparation and negotiation of a new lease for execution by all parties by June 15, 2016.

April 16, 1996 – City executed a 20-year lease with Milwaukie Historical Society for use of real property located on 3737 Adams Street. Said lease expired on April 16, 2016.

FISCAL AND WORK LOAD IMPACTS

There are no financial or work load impacts to staff to administer a new ground lease. Costs have been incurred by the city attorney's office for lease development.

ALTERNATIVES

1. Authorize the city manager to execute a new ground lease
2. Do not authorize the city manager to execute a new ground lease and direct staff to execute another 60-day lease extension to prepare a new lease

ATTACHMENTS

1. New Lease
2. Existing Lease



THIS GROUND LEASE is entered into by and between the CITY OF MILWAUKIE, an Oregon municipal corporation ("City") and the MILWAUKIE HISTORICAL SOCIETY, INC., an Oregon non-profit corporation, ("Tenant").

Whereas:

- A. Tenant owns the Milwaukie Historical Society museum structure located on real property owned by City at 3737 Adams Street;
- B. The lease entered into by and between the parties on April 16, 1996 has expired and the parties desire to enter into a new lease as provided below.

Accordingly, in consideration of the covenants herein, the parties agree as follows:

1. City leases to Tenant the real property described below on the terms and conditions herein:

Lot 23, 24, 25 and 26, Block 74 – Minthorn Addition to the City of Portland, except that portion within Railroad Avenue and also except that portion needed for future widening of Railroad Avenue to then existing city standards.
2. The consideration for this lease shall be compliance by Tenant with the terms and conditions herein, no rent shall be due or payable. The City shall continue to provide water and sewer services at no charge to tenant.
3. Unless otherwise agreed in advance by City, Tenant shall use the premises only for a historical museum for the benefit and enjoyment primarily of the citizens of Milwaukie and for directly related activities. All use shall conform to any applicable federal, state or local laws and regulations.
4. The term of this lease shall be 10 years from the date last executed. Tenant shall have the option to renew for up to two (2) five year periods provided that:
 - a. Tenant notifies City of its intent to renew at least 60 days in advance of termination;
 - b. Tenant is not in material default of any provision of this lease;
 - c. Tenant increases its liability insurance coverage to not less than the minimum amount set forth in the Oregon Tort Claims Act for the period of renewal.
5. Tenant at its own expense shall maintain the museum structure and grounds, including but not limited to trees, vegetation and fencing in good repair, attractive, safe for public access and in compliance with all applicable codes and regulations. City at its own expense shall maintain the outlying shed structure and the concrete walkway on the west side of the museum premises

and the concrete walkway adjacent to the adjoining property (commonly known as the Bertman house), and provide for disposal of tenant's yard debris. Unless City notifies Tenant otherwise in writing, City will provide regular routine mowing of the lawn. Tenant shall not alter the land or grounds without written approval of City, which shall not be unreasonably withheld.

6. Tenant accepts the leased premises AS IS, with all defects whether patent or latent. City makes no representation whatsoever as to the condition or suitability of the premises. Tenant shall maintain casualty insurance on the property in an amount reasonably estimated to be sufficient to repair or replace the structure. Tenant shall maintain liability insurance with coverage limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate and naming the City as an additional insured, and shall provide the City with an endorsement as proof thereof. Tenant further agrees to indemnify and hold harmless the City, its officers, employees and agents, from any and all harm, claims, damages and loss that may arise from Tenant's use of the Premises, which duty of indemnity includes the obligation to defend the City by legal counsel reasonably acceptable to City, at the sole expense of Tenant, in any legal action that may be filed relating to or arising from Tenant's use of the Premises. Tenant's duty to indemnify the City survives termination.
7. Tenant shall have a right of first refusal to purchase the ground should City decide to sell. City shall give Tenant 30 days' notice of a bona fide offer that City desires to accept. Tenant shall have 15 days from the date of the notice to notify City that Tenant elects to purchase the Property on the same terms, including earnest money equal to the amount stated in the offer or 10% of the sale price, whichever is greater. Failure of Tenant to complete the purchase waives any right to further right of refusal and is a breach of this lease.
8. This lease shall terminate on 90 days' notice and opportunity to cure if:
 - a. Tenant is dissolved or the structure ceases to be used as a public historical museum;
 - b. Tenant is in material breach of the terms of this lease; or
 - c. The term expires without renewal as provided for in this lease.

On termination pursuant to any of the above causes, City shall have the option of purchasing the structure, as is, for \$1.00. Nothing in this Agreement shall be construed as requiring City to maintain or preserve the structure.

9. If the City or another condemning authority takes all of the premises or a portion sufficient to render the remaining premises reasonably unsuitable for the permitted uses under this lease by Tenant, the lease shall terminate as of the date the title vests in the condemning authorities. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the premises.
10. Notices required under this lease shall be in writing by first class US Mail to the City Manager or Historical Society Director or registered agent, respectively.
11. The undersigned represent and warrant that they are duly authorized to execute this lease.

Attachment 2

REVISED - LEASE

THIS LEASE, made at Milwaukie, Oregon this 16 day of April, 1996, by and between the CITY OF MILWAUKIE, a municipal corporation under the laws of the State of Oregon, hereinafter referred to as "City," and the MILWAUKIE HISTORICAL SOCIETY, INC., an Oregon corporation, hereinafter referred to as "Society."

WITNESSETH

That in consideration of the covenants, agreements, and stipulations herein contained on the part of said Society to be paid, kept, and faithfully performed by said Society, the city does hereby lease, demise, and let unto the Society the premises known as:

Lot 23, 24, 25 and 26, Block 74 - Minthorn Addition to the City of Portland. Except that portion within Railroad Avenue, and also except that portion needed for future widening of Railroad Avenue. (3737 Adams Street)

in the City of Milwaukie, County of Clackamas, State of Oregon.

Said Society is to have and hold the above-described premises on a lease basis for a period of not to exceed 20 years from the date of this lease, with an option to renew said lease for additional 20-year periods of time by written notice and acceptance on behalf of the City.

That Society agrees to maintain the real property in an acceptable manner to the City, and that at all times any use of said property by Society will have proper insurance to protect and hold harmless the City from any liability caused by activity of the Society.

It is understood and agreed between the parties that Society will construct and maintain on the property an Historical Museum for the benefit and privilege and enjoyment primarily of the citizens of the community of the City of Milwaukie, as well as other people of the county, and that said building will be used solely for the purpose of the Historical Society.

That Society agrees to maintain adequate fire and liability insurance on the structure and activities carried on by the Society, holding harmless the City of Milwaukie.

It is agreed and understood between the parties that if at some future time the City decides to sell the property upon which is located the Historical Society Museum, the Society shall have the first right of refusal of purchase of said property.

That said Society will make no unlawful or improper or offensive use of said premises.

That at such time as this lease is terminated, the Society agrees to quit and deliver the premises to the City in the condition in which it was leased, with the exception of the addition of the museum building; and if this lease is terminated, said building is to become the sole property of the City.

Taking. If a condemning authority takes all of the premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Society was then making of the premises, the lease shall terminate as of the date the title vests in the condemning authorities. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the premises.

This lease may be terminated by six months' written notice by either party to the other at the end of each three-year period. The last period in the twenty year term referenced above shall be a two year period starting on April 16, 2014.

Dated this 16 day of April, 1996.

CITY OF MILWAUKIE

By Craig J. Lomwicki

MILWAUKIE HISTORICAL SOCIETY, INC.

By Lew J. Beckman



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. F.**
Meeting Date: **July 19, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Recreational Marijuana Tax**

From: Casey Camors, Finance Director and Dennis Egner,
Planning Director

Date: July 7, 2016

ACTION REQUESTED

Approve the ordinance and resolution attached to this report. These actions will lead to the enactment of text amendments to the Milwaukie Municipal Code to impose a 3% tax on the sale of recreational marijuana products. Consistent with state law, the resolution includes a referral of the ordinance to City electors at the next statewide general election (November 8, 2016). The ordinance language establishing the tax will only become effective if it receives voter approval.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

- **September 2, 2014:** In advance of the vote on state Measure 91 to legalize recreational marijuana, the Council imposed a 10% local tax on the sale of recreational marijuana products.
- **February 25 and April 15, 2014:** The Council approved and extended a temporary ban on the opening of medical marijuana dispensaries. The ban was lifted in 2015 with adoption of the zoning provisions for medical marijuana dispensaries.

BACKGROUND

Section 34a of House Bill 3400 (2015) (codified at ORS 475B.345) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a 3% tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.

In September 2014, the City Council passed Ordinance 2083 (MMC Chapter 5.55) establishing a 10% tax on recreational marijuana products. This ordinance was adopted as a preemptive measure in the event that Measure 91 passed and prevented new local taxes from being imposed. Subsequently, the legislature passed House Bill 3400 which sets a 3% limit on local taxes and requires a local vote by the electorate to enact the tax. Consistent with state law, the attached ordinance establishes a 3% tax on the sale of recreational marijuana products in the City (MMC Chapter 5.65). Concurrently, the ordinance will repeal the existing code section adopted in 2014 that established the unenforceable 10% marijuana tax (MMC Chapter 5.55).

CONCURRENCE

The City Attorney prepared the draft ordinance and resolution. The Finance Director and Planning Director have coordinated the effort to bring this issue before the Council.

FISCAL AND WORK LOAD IMPACTS

If the ordinance is approved by the voters, Milwaukie will receive additional tax revenue from recreational marijuana sales within City boundaries. The amount received will be entirely dependent on the number of retail outlets in the community and the number of sales. A small administrative expense will be incurred to administer the program. The League of Oregon Cities is working with the State Department of Revenue on an agreement that would enable the state to collect the tax and distribute it to each local government.

ALTERNATIVES

The only alternative offered is to not enact the 3% tax in which case neither the ordinance nor the resolution should be adopted.

ATTACHMENTS

1. Draft Ordinance – Recreational Marijuana Tax
Exhibit A – Proposed Code Amendments (Underline/Strikeout Version)
Exhibit B – Proposed Code Amendments (Clean Version)
2. Resolution – Refers Recreational Marijuana Tax to the Electors
Exhibit A – Recreational Marijuana Tax Ordinance with Exhibits
Exhibit B – Notice of Measure Election
Exhibit C – Explanatory Statement



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No.

AN ORDINANCE ESTABLISHING A THREE PERCENT TAX ON THE SALE OF RECREATIONAL MARIJUANA ITEMS BY A MARIJUANA RETAILER IN THE CITY OF MILWAUKIE.

WHEREAS, Section 34a of House Bill 3400 (2015) (codified at ORS 475B.345) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

WHEREAS, the Milwaukie City Council wishes to exercise that power to tax the sale of recreational marijuana items by a marijuana retailer in the City of Milwaukie; and

WHEREAS, this ordinance shall be referred to the electors of Milwaukie at the next statewide general election on Tuesday, November 8, 2016.

NOW, THEREFORE, THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

SECTION 1. Milwaukie Municipal Code is amended by adding a new Chapter 5.65 Recreational Marijuana Tax, as provided in Exhibit A (Chapters 5.55 and 5.65 underline/strikeout version) and Exhibit B (Chapter 5.65 clean version).

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance or any intergovernmental agreement with the State of Oregon are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Intergovernmental Cooperation. After the effective date of this Ordinance, the City may enter into an agreement whereby the State of Oregon, by and through any state department or agency, is responsible for the administration, collection, distribution or enforcement of the tax authorized under this chapter, either in full or in part, without needing to obtain voter approval.

SECTION 5. Repeal. Milwaukie Municipal Code Chapter 5.55 is hereby repealed, as shown in Exhibit A of the effective date of this ordinance.

SECTION 6. Effective Date. This ordinance shall be effective upon certification by the County Elections official that it has received voter approval at an election conducted on November 8, 2016, and further certification by the County Elections official that any measure on the ballot at the November 8, 2016 election prohibiting the establishment of marijuana entities or licenses, has not received voter approval.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Underline/Strikeout Amendments

~~CHAPTER 5.55 MARIJUANA TAX~~

~~5.55.010 PURPOSE~~

~~For the purposes of this chapter, every person who sells marijuana, medical marijuana or marijuana infused products in the City of Milwaukie is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana infused products.~~

~~5.55.015 DEFINITIONS~~

~~As used in this chapter, unless the context requires otherwise:~~

~~“Director” means the Director of Finance for the City of Milwaukie or designee.~~

~~“Gross sales” means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana infused products that is subject to the tax imposed by this chapter.~~

~~“Marijuana” means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.~~

~~“Oregon Medical Marijuana Program” means the office within the Oregon Health authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.~~

~~“Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.~~

~~“Purchase or sale” means the acquisition or furnishing for consideration by any person of marijuana or marijuana infused product within the city.~~

~~“Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person’s debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.~~

~~“Retail sale” means the transfer of goods or services in exchange for any valuable consideration.~~

~~“Seller” means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana infused products to purchasers for money, credit, property or other consideration.~~

~~“Tax” means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.~~

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~~“Taxpayer” means any person obligated to account to the Director of Finance for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.~~

~~5.55.020 TAX IMPOSED~~

~~A tax is hereby levied and shall be paid by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.~~

~~5.55.025 AMOUNT AND PAYMENT, EXEMPTION, DEDUCTIONS~~

- ~~A. In addition to any fees or taxes otherwise provided for by law, every seller engaged in the sale of marijuana and marijuana-infused products shall pay a tax of ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not registry identification cardholders purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program.~~
- ~~B. Sale of marijuana or marijuana-infused products to individuals who are registry identification cardholders purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program are exempt from taxation under subsection A of this section.~~
- ~~C. The following deductions shall be allowed against sales received by the seller providing marijuana or marijuana-infused products:~~
- ~~1. Refunds of sales actually returned to any purchaser;~~
 - ~~2. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.~~

~~5.55.030 SELLER RESPONSIBLE FOR PAYMENT OF TAX~~

- ~~A. Every seller shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.~~
- ~~B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.~~
- ~~C. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return~~

relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.

- D. ~~Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.~~
- E. ~~Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.~~

5.55.035 PENALTIES AND INTEREST

- A. ~~Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.~~
- B. ~~Any seller who fails to remit any delinquent remittance on or before a period of sixty (60) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.~~
- C. ~~If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.~~
- D. ~~In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.~~
- E. ~~Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.~~
- F. ~~All sums collected pursuant to the penalty provisions in subsections A and C of this section shall be distributed to the City of Milwaukie general fund to offset the costs of auditing and enforcement of this tax.~~

5.55.040 FAILURE TO REPORT AND REMIT TAX—DETERMINATION OF TAX BY DIRECTOR

~~If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in Section 5.55.045. If no appeal~~

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is filed, the Director's determination is final and the amount thereby is immediately due and payable.

~~5.55.045 APPEAL~~

~~Any seller aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.~~

~~5.55.050 REFUNDS~~

- ~~A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subsection B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.~~
- ~~B. The Director shall have twenty (20) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.~~
- ~~C. Any credit for erroneous overpayment of tax made by a seller taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a seller must be so taken or filed within three (3) years after the date on which the overpayment was made to the City.~~
- ~~D. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.~~

~~5.55.055 ACTIONS TO COLLECT~~

~~Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency~~

~~fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.~~

~~5.55.060 VIOLATION~~

~~A. A violation of this chapter shall be punishable by a mandatory fine not to exceed two hundred dollars (\$200.00). Each violation of a separate provision of this chapter shall constitute a separate offense and each day that a violation of this chapter is committed or permitted to continue shall constitute a separate offense. A violation of this chapter shall be processed pursuant to Chapter 1.08 of this code. It is a violation of this chapter for any seller or other person to:~~

- ~~1. Fail or refuse to comply as required herein;~~
- ~~2. Fail or refuse to furnish any return required to be made;~~
- ~~3. Fail or refuse to permit inspection of records;~~
- ~~4. Fail or refuse to furnish a supplemental return or other data required by the Director;~~
- ~~5. Render a false or fraudulent return or claim; or~~
- ~~6. Fail, refuse or neglect to remit the tax to the City by the due date.~~

~~B. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.~~

~~5.55.065 CONFIDENTIALITY~~

~~Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:~~

- ~~A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana or marijuana-infused products are sold or provided; or~~
- ~~B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or~~
- ~~C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or~~
- ~~D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or~~
- ~~E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000.00). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).~~

~~5.55.070 AUDIT OF BOOKS, RECORDS, OR PERSONS~~

~~A. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return,~~

Proposed Code Amendment

~~bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the city limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director.~~

- ~~B. If the examinations or investigations disclose that any reports of sellers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.~~
- ~~C. The seller shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the seller paid ninety seven percent (97%) or less of the tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of nine percent (9%) per year from the date the original tax payment was due.~~
- ~~D. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Milwaukie Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.~~
- ~~E. Every seller shall keep a record in such form as may be prescribed by the Director of all sales of marijuana and marijuana-infused products. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.~~
- ~~F. Every seller shall maintain and keep, for a period of three (3) years, all records of marijuana and marijuana-infused products sold.~~

5.55.075 FORMS AND REGULATIONS

~~The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said marijuana tax and in particular and without limiting the general language of this chapter, to provide for:~~

- ~~A. A form of report on sales and purchases to be supplied to all vendors;~~
 - ~~B. The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this chapter.~~
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Chapter 5.65

RECREATIONAL MARIJUANA TAX

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5.65.075 Intergovernmental Agreement

5.65.010 Purpose

The purpose of this chapter is to impose a three percent (3%) tax upon the retail sale of recreational marijuana items by marijuana retailers in the City of Milwaukie.

5.65.015 Definitions

As used in this ordinance, unless the context requires otherwise:

“Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for purposes of resale.

“Director” means the Director of Finance for the City of Milwaukie or his or her designee.

“Retail sale price” means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

“Marijuana item” has the meaning given that term in ORS 475B.015(16).

“Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

“Marijuana retailer” means any person who is required to be licensed or registered or has been licensed or registered by the State of Oregon to provide marijuana items to consumers for money, credit, property or other consideration.

“Retail sale” or “Sale” means the exchange, gift or barter of a marijuana item by any person to a consumer.

“Tax” means either the tax payable by the marijuana retailer or the aggregate amount of taxes due from a marijuana retailer during the period for which the marijuana retailer is required to report collections under this chapter.

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“Taxpayer” means any person obligated to account to the Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

5.65.020 Tax Imposed

A tax is hereby levied and shall be paid by every marijuana retailer exercising the taxable privilege of selling marijuana items as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

5.65.025 Amount, Payment, and Deductions

In addition to any fees or taxes otherwise provided for by law, every marijuana retailer engaged in the sale of marijuana items in the City of Milwaukie shall pay a tax of three percent (3%) of the retail sale price paid to the marijuana retailer of marijuana items. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

5.65.030 Marijuana Retailer Responsible for Payment of Tax

- A. Every marijuana retailer selling recreational marijuana shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October, and January) make a return to the Director, on forms provided by the City, specifying the total sales of recreational marijuana subject to this chapter and the amount of tax collected under this chapter. The marijuana retailer may request or the Director may establish shorter reporting periods for any marijuana retailer if the marijuana retailer or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director.
- C. Payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any marijuana retailer if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by marijuana retailers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- D. Every marijuana retailer must keep and preserve in an accounting format established by the Director records of all recreational sales made by the retailer and such other books or accounts as may be required by the Director for a period of three (3) years or until all taxes associated with the sales have been paid, whichever is longer. The City shall have the right to inspect all such records at all reasonable times.

5.65.035 Penalties and Interest

- A. Any marijuana retailer who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 3 of this section.
- C. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this chapter shall pay interest at the rate of nine percent (9%) per annum or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- D. Every penalty imposed, and such interest as accrues for violation of this chapter are separate from, and in addition to, the tax imposed on the sale of marijuana items.
- E. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of Milwaukie General Fund to offset the costs of auditing and enforcement of this tax.

5.65.040 Appeal

Any marijuana retailer aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.65.045 Refunds

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have thirty (30) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a marijuana retailer may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The marijuana retailer shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the marijuana retailer is still in business, a credit will be granted against the tax liability for the next reporting period. If the marijuana retailer is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

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C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

5.65.050 Actions to Collect

Any tax required to be paid by any marijuana retailer under the provisions of this chapter shall be deemed a debt owed by the marijuana retailer to the City. Any such tax collected by a marijuana retailer which has not been paid to the City shall be deemed a debt owed by the marijuana retailer to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed fifty percent (50%) of the outstanding tax, penalties and interest owing.

5.65.055 Violation

A. Violation of this chapter shall constitute a violation pursuant to Chapter 1.12 of this code, General Penalty. It is a violation of this chapter for any marijuana retailer or other person to:

1. Fail or refuse to comply as required herein;
2. Fail or refuse to furnish any return required to be made;
3. Fail or refuse to permit inspection of records;
4. Fail or refuse to furnish a supplemental return or other data required by the Director;
5. Render a false or fraudulent return or claim; or
6. Fail, refuse or neglect to remit the tax to the City by the due date.

B. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

5.65.060 Confidentiality

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release, or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

- A. The disclosure of general statistics in a form which would not reveal an individual marijuana retailer's financial information; or
- B. The disclosure of information to any state agency related to the licensing or registration of the marijuana retailer or when required to carry out any part of this chapter.
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

5.65.065 Audit of Books, Records, or Persons

A. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of marijuana retailer's state and federal income tax return, bearing upon the matter of the marijuana retailer's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director.

B. If the examinations or investigations disclose that any reports of marijuana retailers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.

C. The marijuana retailer shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the marijuana retailer underpaid by 3% or more tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate set by resolution of Council from the date the original tax payment was due.

D. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts, and records for examination.

E. Every marijuana retailer shall keep a record in such form as may be prescribed by the Director of all sales of marijuana items. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.

F. Every marijuana retailer shall maintain and keep, for a period of three (3) years, all records of marijuana items sold.

5.65.070 Forms and Regulations

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment, and collection of said recreational marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

A. A form to report on sales and purchases to be supplied to all vendors;

B. The records which marijuana retailers are to keep concerning the tax imposed by this chapter.

C. A form to report refund claims.

5.65.075 Intergovernmental Agreement

The City Council may enter into an IGA with the State of Oregon whereby a state department or agency is responsible for the administration, collection, distribution, or enforcement of the tax authorized by this chapter, either in full or in part. The terms of that agreement shall apply in lieu of and shall supersede conflicting provisions of this chapter but shall not be construed as repealing any provision of this chapter.

Clean Amendments

Chapter 5.65

RECREATIONAL MARIJUANA TAX

- 5.65.010 Purpose**
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- 5.65.065 Audit of Books, Records, or Persons**
- 5.65.070 Forms and Regulations**
- 5.65.075 Intergovernmental Agreement**

5.65.010 Purpose

The purpose of this chapter is to impose a three percent (3%) tax upon the retail sale of recreational marijuana items by marijuana retailers in the City of Milwaukie.

5.65.015 Definitions

As used in this ordinance, unless the context requires otherwise:

“Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for purposes of resale.

“Director” means the Director of Finance for the City of Milwaukie or his or her designee.

“Retail sale price” means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

“Marijuana item” has the meaning given that term in ORS 475B.015(16).

“Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

“Marijuana retailer” means any person who is required to be licensed or registered or has been licensed or registered by the State of Oregon to provide marijuana items to consumers for money, credit, property or other consideration.

“Retail sale” or “Sale” means the exchange, gift or barter of a marijuana item by any person to a consumer.

“Tax” means either the tax payable by the marijuana retailer or the aggregate amount of taxes due from a marijuana retailer during the period for which the marijuana retailer is required to report collections under this chapter.

“Taxpayer” means any person obligated to account to the Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

5.65.020 Tax Imposed

A tax is hereby levied and shall be paid by every marijuana retailer exercising the taxable privilege of selling marijuana items as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

5.65.025 Amount, Payment, and Deductions

In addition to any fees or taxes otherwise provided for by law, every marijuana retailer engaged in the sale of marijuana items in the City of Milwaukie shall pay a tax of three percent (3%) of the retail sale price paid to the marijuana retailer of marijuana items. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

5.65.030 Marijuana Retailer Responsible for Payment of Tax

- A. Every marijuana retailer selling recreational marijuana shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October, and January) make a return to the Director, on forms provided by the City, specifying the total sales of recreational marijuana subject to this chapter and the amount of tax collected under this chapter. The marijuana retailer may request or the Director may establish shorter reporting periods for any marijuana retailer if the marijuana retailer or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director.
- C. Payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any marijuana retailer if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by marijuana retailers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- D. Every marijuana retailer must keep and preserve in an accounting format established by the Director records of all recreational sales made by the retailer and such other books or accounts as may be required by the Director for a period of three (3) years or until all taxes associated with the sales have been paid, whichever is longer. The City shall have the right to inspect all such records at all reasonable times.

5.65.035 Penalties and Interest

- A. Any marijuana retailer who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 3 of this section.
- C. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this chapter shall pay interest at the rate of nine percent (9%) per annum or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- D. Every penalty imposed, and such interest as accrues for violation of this chapter are separate from, and in addition to, the tax imposed on the sale of marijuana items.
- E. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of Milwaukie General Fund to offset the costs of auditing and enforcement of this tax.

5.65.040 Appeal

Any marijuana retailer aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.65.045 Refunds

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have thirty (30) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a marijuana retailer may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The marijuana retailer shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the marijuana retailer is still in business, a credit will be granted against the tax liability for the next reporting period. If the marijuana retailer is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

- C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

5.65.050 Actions to Collect

Any tax required to be paid by any marijuana retailer under the provisions of this chapter shall be deemed a debt owed by the marijuana retailer to the City. Any such tax collected by a marijuana retailer which has not been paid to the City shall be deemed a debt owed by the marijuana retailer to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed fifty percent (50%) of the outstanding tax, penalties and interest owing.

5.65.055 Violation

- A. Violation of this chapter shall constitute a violation pursuant to Chapter 1.12 of this code, General Penalty. It is a violation of this chapter for any marijuana retailer or other person to:
 - 1. Fail or refuse to comply as required herein;
 - 2. Fail or refuse to furnish any return required to be made;
 - 3. Fail or refuse to permit inspection of records;
 - 4. Fail or refuse to furnish a supplemental return or other data required by the Director;
 - 5. Render a false or fraudulent return or claim; or
 - 6. Fail, refuse or neglect to remit the tax to the City by the due date.
- B. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

5.65.060 Confidentiality

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release, or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

- A. The disclosure of general statistics in a form which would not reveal an individual marijuana retailer's financial information; or
- B. The disclosure of information to any state agency related to the licensing or registration of the marijuana retailer or when required to carry out any part of this chapter.
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

- E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

5.65.065 Audit of Books, Records, or Persons

- A. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of marijuana retailer's state and federal income tax return, bearing upon the matter of the marijuana retailer's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director.
- B. If the examinations or investigations disclose that any reports of marijuana retailers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.
- C. The marijuana retailer shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the marijuana retailer underpaid by 3% or more tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate set by resolution of Council from the date the original tax payment was due.
- D. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts, and records for examination.
- E. Every marijuana retailer shall keep a record in such form as may be prescribed by the Director of all sales of marijuana items. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.
- F. Every marijuana retailer shall maintain and keep, for a period of three (3) years, all records of marijuana items sold.

5.65.070 Forms and Regulations

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment, and collection of said recreational marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- A. A form to report on sales and purchases to be supplied to all vendors;
- B. The records which marijuana retailers are to keep concerning the tax imposed by this chapter.
- C. A form to report refund claims.

5.65.075 Intergovernmental Agreement

The City Council may enter into an IGA with the State of Oregon whereby a state department or agency is responsible for the administration, collection, distribution, or enforcement of the tax authorized by this chapter, either in full or in part. The terms of that agreement shall apply in lieu of and shall supersede conflicting provisions of this chapter but shall not be construed as repealing any provision of this chapter.



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING REFERRAL TO THE ELECTORS OF THE CITY OF MILWAUKIE AT THE NOVEMBER 8, 2016 GENERAL ELECTION, THE QUESTION OF WHETHER TO ESTABLISH A THREE PERCENT TAX ON THE SALE OF RECREATIONAL MARIJUANA ITEMS BY A MARIJUANA RETAILER IN THE CITY OF MILWAUKIE.

WHEREAS, Section 34a of HB 3400 (codified at ORS 475B.345) provides that a city council may adopt an ordinance to be referred to the electors of the city that imposes up to a three percent tax or fee on the sale of recreational marijuana items by a marijuana retailer in the area subject to the jurisdiction of the City; and

WHEREAS, the City of Milwaukie City Council adopted Ordinance No.____, which establishes a three percent tax or fee on the sale of recreational marijuana items by a marijuana retailer in the City of Milwaukie; and

WHEREAS, the Milwaukie City Council, pursuant to Section 34a of HB 3400 (ORS 475B.345), desires to refer Ordinance No. _____ to the electors of the City of Milwaukie.

Now, Therefore, be it Resolved that:

SECTION 1. Measure. A measure election is called in and for the City of Milwaukie, Clackamas County, Oregon, for the purpose of submitting a measure that would establish a three percent tax on the sale of recreational marijuana items by marijuana retailers in the City of Milwaukie. A copy of the ordinance that is subject to the measure is attached and incorporated as "Exhibit A."

SECTION 2. Election Conducted by Mail. The measure election shall be held on Tuesday, November 8, 2016, which is the next general election. The precinct for the election shall be all of the territory within the corporate limits of the City of Milwaukie. As required by ORS 254.465, the measure election will be conducted by mail by the Clackamas County Elections Department, according to the procedures adopted by the Oregon Secretary of State.

SECTION 3. Notice of Ballot Title. The City Elections Officer is directed to publish notice of receipt of the ballot title in the Milwaukie Chronicle or The Oregonian in compliance with ORS 250.275(5).

SECTION 4. Ballot Title. Pursuant to ORS 250.285 and ORS 254.095, the Milwaukie City Council directs the City Elections Officer to file a notice of City Measure Election in substantially the form of Exhibit B, with the Clackamas County Elections Office, unless, pursuant to a valid ballot title challenge, a judge at the Clackamas County Circuit Court certifies a different Notice of City Measure Election be filed, such filing shall occur no earlier than the eighth business day after the date on which Exhibit B is filed with the City Elections Officer and not later than September 8, 2016.

SECTION 5. Explanatory Statement. The explanatory statement for the measure, for publication in the county voters' pamphlet, which is attached and incorporated as "Exhibit C," is approved; said statement shall be filed with the Clackamas County Elections Office at the same time the Notice of City Measure Election is filed by the City Elections Officer.

SECTION 6. Delegation. The Milwaukie City Council authorizes the City Manager or a designee of the City Manager to act on behalf of the City of Milwaukie and to take such further action as is necessary to carry out the intent and purposes herein in compliance with the applicable provisions of law.

SECTION 7. Effect of "Yes" Vote. If a majority of eligible voters vote "yes" on the measure, Ordinance No. _____ will become operative, and a three percent tax will be imposed on the sale of recreational marijuana items by marijuana retailers in the corporate limits of the City of Milwaukie.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



CITY OF MILWAUKIE

"Dogwood City of the West"

Ordinance No.

AN ORDINANCE ESTABLISHING A THREE PERCENT TAX ON THE SALE OF RECREATIONAL MARIJUANA ITEMS BY A MARIJUANA RETAILER IN THE CITY OF MILWAUKIE.

WHEREAS, Section 34a of House Bill 3400 (2015) (codified at ORS 475B.345) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

WHEREAS, the Milwaukie City Council wishes to exercise that power to tax the sale of recreational marijuana items by a marijuana retailer in the City of Milwaukie; and

WHEREAS, this ordinance shall be referred to the electors of Milwaukie at the next statewide general election on Tuesday, November 8, 2016.

NOW, THEREFORE, THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

SECTION 1. Milwaukie Municipal Code is amended by adding a new Chapter 5.65 Recreational Marijuana Tax, as provided in Exhibit A (Chapters 5.55 and 5.65 underline/strikeout version) and Exhibit B (Chapter 5.65 clean version).

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance or any intergovernmental agreement with the State of Oregon are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Intergovernmental Cooperation. After the effective date of this Ordinance, the City may enter into an agreement whereby the State of Oregon, by and through any state department or agency, is responsible for the administration, collection, distribution or enforcement of the tax authorized under this chapter, either in full or in part, without needing to obtain voter approval.

SECTION 5. Repeal. Milwaukie Municipal Code Chapter 5.55 is hereby repealed, as shown in Exhibit A of the effective date of this ordinance.

SECTION 6. Effective Date. This ordinance shall be effective upon certification by the County Elections official that it has received voter approval at an election conducted on November 8, 2016, and further certification by the County Elections official that any measure on the ballot at the November 8, 2016 election prohibiting the establishment of marijuana entities or licenses, has not received voter approval.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Underline/Strikeout Amendments

~~CHAPTER 5.55 MARIJUANA TAX~~

~~5.55.010 PURPOSE~~

~~For the purposes of this chapter, every person who sells marijuana, medical marijuana or marijuana infused products in the City of Milwaukie is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana infused products.~~

~~5.55.015 DEFINITIONS~~

~~As used in this chapter, unless the context requires otherwise:~~

~~“Director” means the Director of Finance for the City of Milwaukie or designee.~~

~~“Gross sales” means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana infused products that is subject to the tax imposed by this chapter.~~

~~“Marijuana” means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.~~

~~“Oregon Medical Marijuana Program” means the office within the Oregon Health authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.~~

~~“Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.~~

~~“Purchase or sale” means the acquisition or furnishing for consideration by any person of marijuana or marijuana infused product within the city.~~

~~“Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person’s debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.~~

~~“Retail sale” means the transfer of goods or services in exchange for any valuable consideration.~~

~~“Seller” means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana infused products to purchasers for money, credit, property or other consideration.~~

~~“Tax” means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.~~

Proposed Code Amendment

~~“Taxpayer” means any person obligated to account to the Director of Finance for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.~~

~~5.55.020 TAX IMPOSED~~

~~A tax is hereby levied and shall be paid by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.~~

~~5.55.025 AMOUNT AND PAYMENT, EXEMPTION, DEDUCTIONS~~

- ~~A. In addition to any fees or taxes otherwise provided for by law, every seller engaged in the sale of marijuana and marijuana-infused products shall pay a tax of ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not registry identification cardholders purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program.~~
- ~~B. Sale of marijuana or marijuana-infused products to individuals who are registry identification cardholders purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program are exempt from taxation under subsection A of this section.~~
- ~~C. The following deductions shall be allowed against sales received by the seller providing marijuana or marijuana-infused products:~~
- ~~1. Refunds of sales actually returned to any purchaser;~~
 - ~~2. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.~~

~~5.55.030 SELLER RESPONSIBLE FOR PAYMENT OF TAX~~

- ~~A. Every seller shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.~~
- ~~B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.~~
- ~~C. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return~~

~~relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.~~

- ~~D. Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.~~
- ~~E. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.~~

~~5.55.035 PENALTIES AND INTEREST~~

- ~~A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.~~
- ~~B. Any seller who fails to remit any delinquent remittance on or before a period of sixty (60) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.~~
- ~~C. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.~~
- ~~D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.~~
- ~~E. Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.~~
- ~~F. All sums collected pursuant to the penalty provisions in subsections A and C of this section shall be distributed to the City of Milwaukie general fund to offset the costs of auditing and enforcement of this tax.~~

~~5.55.040 FAILURE TO REPORT AND REMIT TAX—DETERMINATION OF TAX BY DIRECTOR~~

~~If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in Section 5.55.045. If no appeal~~

Proposed Code Amendment

is filed, the Director's determination is final and the amount thereby is immediately due and payable.

~~5.55.045 APPEAL~~

~~Any seller aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.~~

~~5.55.050 REFUNDS~~

- ~~A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subsection B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.~~
- ~~B. The Director shall have twenty (20) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.~~
- ~~C. Any credit for erroneous overpayment of tax made by a seller taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a seller must be so taken or filed within three (3) years after the date on which the overpayment was made to the City.~~
- ~~D. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.~~

~~5.55.055 ACTIONS TO COLLECT~~

~~Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency~~

~~fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.~~

~~5.55.060 VIOLATION~~

~~A. A violation of this chapter shall be punishable by a mandatory fine not to exceed two hundred dollars (\$200.00). Each violation of a separate provision of this chapter shall constitute a separate offense and each day that a violation of this chapter is committed or permitted to continue shall constitute a separate offense. A violation of this chapter shall be processed pursuant to Chapter 1.08 of this code. It is a violation of this chapter for any seller or other person to:~~

- ~~1. Fail or refuse to comply as required herein;~~
- ~~2. Fail or refuse to furnish any return required to be made;~~
- ~~3. Fail or refuse to permit inspection of records;~~
- ~~4. Fail or refuse to furnish a supplemental return or other data required by the Director;~~
- ~~5. Render a false or fraudulent return or claim; or~~
- ~~6. Fail, refuse or neglect to remit the tax to the City by the due date.~~

~~B. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.~~

~~5.55.065 CONFIDENTIALITY~~

~~Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:~~

- ~~A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana or marijuana-infused products are sold or provided; or~~
- ~~B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or~~
- ~~C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or~~
- ~~D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or~~
- ~~E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000.00). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).~~

~~5.55.070 AUDIT OF BOOKS, RECORDS, OR PERSONS~~

~~A. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return,~~

Proposed Code Amendment

~~bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the city limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director.~~

- ~~B. If the examinations or investigations disclose that any reports of sellers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.~~
- ~~C. The seller shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the seller paid ninety seven percent (97%) or less of the tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of nine percent (9%) per year from the date the original tax payment was due.~~
- ~~D. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Milwaukie Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.~~
- ~~E. Every seller shall keep a record in such form as may be prescribed by the Director of all sales of marijuana and marijuana-infused products. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.~~
- ~~F. Every seller shall maintain and keep, for a period of three (3) years, all records of marijuana and marijuana-infused products sold.~~

5.55.075 FORMS AND REGULATIONS

~~The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said marijuana tax and in particular and without limiting the general language of this chapter, to provide for:~~

- ~~A. A form of report on sales and purchases to be supplied to all vendors;~~
 - ~~B. The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this chapter.~~
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Chapter 5.65

RECREATIONAL MARIJUANA TAX

5.65.010 Purpose
5.65.015 Definitions
5.65.020 Tax Imposed
5.65.025 Amount, Payment, and Deductions
5.65.030 Marijuana Retailer Responsible for Payment of Tax
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5.65.060 Confidentiality
5.65.065 Audit of Books, Records, or Persons
5.65.070 Forms and Regulations
5.65.075 Intergovernmental Agreement

5.65.010 Purpose

The purpose of this chapter is to impose a three percent (3%) tax upon the retail sale of recreational marijuana items by marijuana retailers in the City of Milwaukie.

5.65.015 Definitions

As used in this ordinance, unless the context requires otherwise:

“Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for purposes of resale.

“Director” means the Director of Finance for the City of Milwaukie or his or her designee.

“Retail sale price” means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

“Marijuana item” has the meaning given that term in ORS 475B.015(16).

“Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

“Marijuana retailer” means any person who is required to be licensed or registered or has been licensed or registered by the State of Oregon to provide marijuana items to consumers for money, credit, property or other consideration.

“Retail sale” or “Sale” means the exchange, gift or barter of a marijuana item by any person to a consumer.

“Tax” means either the tax payable by the marijuana retailer or the aggregate amount of taxes due from a marijuana retailer during the period for which the marijuana retailer is required to report collections under this chapter.

Proposed Code Amendment

“Taxpayer” means any person obligated to account to the Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

5.65.020 Tax Imposed

A tax is hereby levied and shall be paid by every marijuana retailer exercising the taxable privilege of selling marijuana items as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

5.65.025 Amount, Payment, and Deductions

In addition to any fees or taxes otherwise provided for by law, every marijuana retailer engaged in the sale of marijuana items in the City of Milwaukie shall pay a tax of three percent (3%) of the retail sale price paid to the marijuana retailer of marijuana items. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

5.65.030 Marijuana Retailer Responsible for Payment of Tax

- A. Every marijuana retailer selling recreational marijuana shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October, and January) make a return to the Director, on forms provided by the City, specifying the total sales of recreational marijuana subject to this chapter and the amount of tax collected under this chapter. The marijuana retailer may request or the Director may establish shorter reporting periods for any marijuana retailer if the marijuana retailer or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director.
- C. Payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any marijuana retailer if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by marijuana retailers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- D. Every marijuana retailer must keep and preserve in an accounting format established by the Director records of all recreational sales made by the retailer and such other books or accounts as may be required by the Director for a period of three (3) years or until all taxes associated with the sales have been paid, whichever is longer. The City shall have the right to inspect all such records at all reasonable times.

5.65.035 Penalties and Interest

- A. Any marijuana retailer who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 3 of this section.
- C. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this chapter shall pay interest at the rate of nine percent (9%) per annum or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- D. Every penalty imposed, and such interest as accrues for violation of this chapter are separate from, and in addition to, the tax imposed on the sale of marijuana items.
- E. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of Milwaukie General Fund to offset the costs of auditing and enforcement of this tax.

5.65.040 Appeal

Any marijuana retailer aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.65.045 Refunds

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have thirty (30) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a marijuana retailer may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The marijuana retailer shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the marijuana retailer is still in business, a credit will be granted against the tax liability for the next reporting period. If the marijuana retailer is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

Proposed Code Amendment

C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

5.65.050 Actions to Collect

Any tax required to be paid by any marijuana retailer under the provisions of this chapter shall be deemed a debt owed by the marijuana retailer to the City. Any such tax collected by a marijuana retailer which has not been paid to the City shall be deemed a debt owed by the marijuana retailer to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed fifty percent (50%) of the outstanding tax, penalties and interest owing.

5.65.055 Violation

A. Violation of this chapter shall constitute a violation pursuant to Chapter 1.12 of this code, General Penalty. It is a violation of this chapter for any marijuana retailer or other person to:

1. Fail or refuse to comply as required herein;
2. Fail or refuse to furnish any return required to be made;
3. Fail or refuse to permit inspection of records;
4. Fail or refuse to furnish a supplemental return or other data required by the Director;
5. Render a false or fraudulent return or claim; or
6. Fail, refuse or neglect to remit the tax to the City by the due date.

B. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

5.65.060 Confidentiality

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release, or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

- A. The disclosure of general statistics in a form which would not reveal an individual marijuana retailer's financial information; or
- B. The disclosure of information to any state agency related to the licensing or registration of the marijuana retailer or when required to carry out any part of this chapter.
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

5.65.065 Audit of Books, Records, or Persons

A. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of marijuana retailer's state and federal income tax return, bearing upon the matter of the marijuana retailer's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director.

B. If the examinations or investigations disclose that any reports of marijuana retailers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.

C. The marijuana retailer shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the marijuana retailer underpaid by 3% or more tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate set by resolution of Council from the date the original tax payment was due.

D. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts, and records for examination.

E. Every marijuana retailer shall keep a record in such form as may be prescribed by the Director of all sales of marijuana items. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.

F. Every marijuana retailer shall maintain and keep, for a period of three (3) years, all records of marijuana items sold.

5.65.070 Forms and Regulations

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment, and collection of said recreational marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

A. A form to report on sales and purchases to be supplied to all vendors;

B. The records which marijuana retailers are to keep concerning the tax imposed by this chapter.

C. A form to report refund claims.

5.65.075 Intergovernmental Agreement

The City Council may enter into an IGA with the State of Oregon whereby a state department or agency is responsible for the administration, collection, distribution, or enforcement of the tax authorized by this chapter, either in full or in part. The terms of that agreement shall apply in lieu of and shall supersede conflicting provisions of this chapter but shall not be construed as repealing any provision of this chapter.

Clean Amendments

Chapter 5.65

RECREATIONAL MARIJUANA TAX

- 5.65.010 Purpose**
- 5.65.015 Definitions**
- 5.65.020 Tax Imposed**
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- 5.65.065 Audit of Books, Records, or Persons**
- 5.65.070 Forms and Regulations**
- 5.65.075 Intergovernmental Agreement**

5.65.010 Purpose

The purpose of this chapter is to impose a three percent (3%) tax upon the retail sale of recreational marijuana items by marijuana retailers in the City of Milwaukie.

5.65.015 Definitions

As used in this ordinance, unless the context requires otherwise:

“Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for purposes of resale.

“Director” means the Director of Finance for the City of Milwaukie or his or her designee.

“Retail sale price” means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

“Marijuana item” has the meaning given that term in ORS 475B.015(16).

“Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

“Marijuana retailer” means any person who is required to be licensed or registered or has been licensed or registered by the State of Oregon to provide marijuana items to consumers for money, credit, property or other consideration.

“Retail sale” or “Sale” means the exchange, gift or barter of a marijuana item by any person to a consumer.

“Tax” means either the tax payable by the marijuana retailer or the aggregate amount of taxes due from a marijuana retailer during the period for which the marijuana retailer is required to report collections under this chapter.

“Taxpayer” means any person obligated to account to the Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

5.65.020 Tax Imposed

A tax is hereby levied and shall be paid by every marijuana retailer exercising the taxable privilege of selling marijuana items as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

5.65.025 Amount, Payment, and Deductions

In addition to any fees or taxes otherwise provided for by law, every marijuana retailer engaged in the sale of marijuana items in the City of Milwaukie shall pay a tax of three percent (3%) of the retail sale price paid to the marijuana retailer of marijuana items. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

5.65.030 Marijuana Retailer Responsible for Payment of Tax

- A. Every marijuana retailer selling recreational marijuana shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October, and January) make a return to the Director, on forms provided by the City, specifying the total sales of recreational marijuana subject to this chapter and the amount of tax collected under this chapter. The marijuana retailer may request or the Director may establish shorter reporting periods for any marijuana retailer if the marijuana retailer or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director.
- C. Payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any marijuana retailer if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by marijuana retailers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- D. Every marijuana retailer must keep and preserve in an accounting format established by the Director records of all recreational sales made by the retailer and such other books or accounts as may be required by the Director for a period of three (3) years or until all taxes associated with the sales have been paid, whichever is longer. The City shall have the right to inspect all such records at all reasonable times.

5.65.035 Penalties and Interest

- A. Any marijuana retailer who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 3 of this section.
- C. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this chapter shall pay interest at the rate of nine percent (9%) per annum or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- D. Every penalty imposed, and such interest as accrues for violation of this chapter are separate from, and in addition to, the tax imposed on the sale of marijuana items.
- E. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of Milwaukie General Fund to offset the costs of auditing and enforcement of this tax.

5.65.040 Appeal

Any marijuana retailer aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.65.045 Refunds

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have thirty (30) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a marijuana retailer may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The marijuana retailer shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the marijuana retailer is still in business, a credit will be granted against the tax liability for the next reporting period. If the marijuana retailer is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

- C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

5.65.050 Actions to Collect

Any tax required to be paid by any marijuana retailer under the provisions of this chapter shall be deemed a debt owed by the marijuana retailer to the City. Any such tax collected by a marijuana retailer which has not been paid to the City shall be deemed a debt owed by the marijuana retailer to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed fifty percent (50%) of the outstanding tax, penalties and interest owing.

5.65.055 Violation

- A. Violation of this chapter shall constitute a violation pursuant to Chapter 1.12 of this code, General Penalty. It is a violation of this chapter for any marijuana retailer or other person to:
 - 1. Fail or refuse to comply as required herein;
 - 2. Fail or refuse to furnish any return required to be made;
 - 3. Fail or refuse to permit inspection of records;
 - 4. Fail or refuse to furnish a supplemental return or other data required by the Director;
 - 5. Render a false or fraudulent return or claim; or
 - 6. Fail, refuse or neglect to remit the tax to the City by the due date.
- B. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

5.65.060 Confidentiality

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release, or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

- A. The disclosure of general statistics in a form which would not reveal an individual marijuana retailer's financial information; or
- B. The disclosure of information to any state agency related to the licensing or registration of the marijuana retailer or when required to carry out any part of this chapter.
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

- E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

5.65.065 Audit of Books, Records, or Persons

- A. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of marijuana retailer's state and federal income tax return, bearing upon the matter of the marijuana retailer's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director.
- B. If the examinations or investigations disclose that any reports of marijuana retailers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.
- C. The marijuana retailer shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the marijuana retailer underpaid by 3% or more tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate set by resolution of Council from the date the original tax payment was due.
- D. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts, and records for examination.
- E. Every marijuana retailer shall keep a record in such form as may be prescribed by the Director of all sales of marijuana items. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.
- F. Every marijuana retailer shall maintain and keep, for a period of three (3) years, all records of marijuana items sold.

5.65.070 Forms and Regulations

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment, and collection of said recreational marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- A. A form to report on sales and purchases to be supplied to all vendors;
- B. The records which marijuana retailers are to keep concerning the tax imposed by this chapter.
- C. A form to report refund claims.

5.65.075 Intergovernmental Agreement

The City Council may enter into an IGA with the State of Oregon whereby a state department or agency is responsible for the administration, collection, distribution, or enforcement of the tax authorized by this chapter, either in full or in part. The terms of that agreement shall apply in lieu of and shall supersede conflicting provisions of this chapter but shall not be construed as repealing any provision of this chapter.

Notice of Measure Election City

Notice		
Date of Notice	Name of City or Cities City of Milwaukie	Date of Election November 8, 2016

The following is the final ballot title of the measure to be submitted to the city's voters.

Final Ballot Title	Notice of receipt of ballot title has been published and the ballot title challenge process has been completed.
Caption	10 words which reasonably identifies the subject of the measure
Imposes city tax on marijuana retailer's sale of marijuana items.	

Question	20 words which plainly phrases the chief purpose of the measure
Shall the City impose a three percent tax on the sale of recreational marijuana items by a marijuana retailer?	

Summary	175 words which concisely and impartially summarizes the measure and its major effect
Under state law, a city council may adopt an ordinance to be referred to the voters of the city imposing up to a three percent tax or fee on the sale of recreational marijuana items in the city by a licensed marijuana retailer.	
If this measure is adopted, it would approve a Milwaukie Ordinance imposing a three percent tax on the sale of recreational marijuana items in the city by a licensed marijuana retailer. The tax would be collected at the point of sale and remitted by the marijuana retailer. The measure also includes provisions regarding collection, administration and enforcement of the tax.	

Explanatory Statement	500 words that impartially explains the measure and its effect, if required attach to this form					
If the county is producing a voters' pamphlet an explanatory statement must be submitted for any measure referred by the city governing body and if required by local ordinance, for any initiative or referendum.						
Measure Type	County producing voters' pamphlet	Local ordinance requiring submission		Explanatory statement required		
<input checked="" type="checkbox"/> Referral	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Not applicable		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/> Initiative	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/> Referendum	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

Authorized City Official	Not required to be notarized
→ By signing this document, I hereby state that I am authorized by the city to submit this Notice of Measure Election and I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.	

Name	Title	Work Phone
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Signature	Date Signed
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EXPLANATORY STATEMENT

500 words

Under measure 91, adopted by the Oregon voters in November 2014, and amended by the Legislature in 2015, the Oregon Liquor Control Commission must license the retail sale of recreational marijuana. The 2015 Legislation provides that a city council may adopt an ordinance imposing up to a three percent tax on the sale of recreational marijuana items (which include marijuana concentrates, extracts, edibles, and other products intended for human consumption and use) by retail licensees in the city, but the council must refer that ordinance to the voters at a statewide general election. The City of Milwaukie City Council has adopted an ordinance imposing a three percent tax on the sale of recreational marijuana items by a marijuana retailer in the city, and, as a result, has referred this measure to the voters.

If this measure is adopted, it would approve Milwaukie Ordinance No. ____ imposing a three percent tax on the sale of recreational marijuana items in the city by a licensed marijuana retailer. The tax would be collected at the point of sale and remitted by the marijuana retailer. The measure also includes provisions regarding collection, administration and enforcement of the tax. There are no restrictions on how the city may use the revenues generated by this tax.